आयुक्त (अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

सत्यमेव जयते

07926305065- टेलेफैक्स07926305136

NATION TAX MARKET

रजिस्टर्ड डाक ए.डी. द्वारा **DIN: 20210864SW000000EDC1**

क फाइल संख्या : File No : GAPPL/COM/STP/606/2020/2768 TO 2772

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-003-APP- 019/2021-22**

दिनाँक Date : **23-07-2021** जारी करने की तारीख Date of Issue 24/08/2021

श्री अखिलेश कुमार आयुक्त (अपील) द्वारा पारित

Passed by Shri. Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No **16/AC/MEH/CGST/20-21** issued by Asst Commissioner, Central Tax,mehsana division, Gandhinagar commissionerate.

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

M/s Rutvik Power Services,40/2,Market Yard,Visnagar-384315

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal issued under the Central Excise Act 1944,may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

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

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

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

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक से तीन मास के भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35–इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर–6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/– फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/– की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपीलः–

Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केंद्रीय जीएसटी अधिनियम, 2017 की धारा 112 के अंतर्गतः–

Under Section 112 of CGST act 2017 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद –380004

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

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओए संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

(7) केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है**

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules.

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

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

II. **Any person aggrieved by an Order-In-Appeal issued under** the Central Goods and Services Tax Act,2017/Integrated Goods and Services Tax Act,2017/ Goods and Services Tax(Compensation to states) Act,2017,may file an appeal before the appellate tribunal whenever it is constituted within three months from the president or the state president enter office.

ORDER-IN-APPEAL

1. This order arises out of an appeal filed by M/s. Rutvik Power Services, 40/2, Market Yard, Visnagar-384315(hereinafter referred to as '*appellant*') against Order in Original No. 16/AC/MEH/CGST/20-21 dated 31.07.2020 (hereinafter referred to as '*the impugned order*') passed by the Assistant Commissioner, Central GST, Division-Mehsana, Commissionerate-Gandhinagar (hereinafter referred to as '*the adjudicating authority*').

2. Facts of the case, in brief, are that the appellant is engaged in providing services under the category of "erection, commissioning & installation" as well as "works contract services" and holding Service Tax Registration Number ABRPP5189RSD001.

2.1 Audit of the records of the appellant was carried out by the departmental audit officers for the period from April, 2016 to June, 2017. Based on the audit observations, a show cause notice no. 105/2019-20 has been issued vide F.No. VI/1(b)-1798/Rutvik PS/IA/18-19/AP-57 to the said appellant for demand and recovery of the amounts as mentioned below:

(i) Cenvat Credit of Rs. 1,070/- on account of wrong availment of cenvat credit on insurance and telephone services.
(ii) Service tax amounting to Rs. 1,69,431/- on account of short payment of service tax noticed on reconciliation of income, as declared in ST-3 Returns for the period vis-à-vis their financial records.
(iii) Penalty proposed under Section 78(1) of the Finance Act, 1994 readwith Rule 15 (3) of the Cenvat Credit Rules, on account of the demands proposed at (i) above.
(iv) Penalty proposed under Section 78 (1) of the Finance Act, 1994, on account of the demands proposed at (ii) above.
(v) Interest at the appropriate rate on the demands proposed at (i) above under Section 75 of the Finance Act, 1994 readwith Rule 14 (1) (ii) of the Cenvat Credit Rules.
(vi) Interest at the appropriate rate on the demands proposed at (ii) above under Section 75 of the Finance Act, 1994.

2.2 The show cause notice No. 105/2019-20 has been adjudicated by the adjudicating authority vide the impugned order wherein all the demands, proposed vide the show cause notice [as mentioned in above para-2.1] have been confirmed and ordered to be recovered alongwith penalty & interest leviable thereon. The grounds on which the adjudicating authority has confirmed the demands vide impugned order are briefly reproduced below:

(1) The appellant has availed Cenvat Credit of Rs. 1,070/- on insurance and telephone services for personal use which is not eligible as per the exclusion clause detailed under the provisions of Rule 2(l) of the Cenvat Credit Rules, 2004. In case of Carrier AC & Refri. Ltd. Vs. CCE, Delhi-IV (2016 (41) STR 824 (Tri.-Chan) also, it has been specifically ruled out that Cenvat Credit on input services of personal use or consumption of employees is not eligible.

(2) During reconciliation between financial statements and ST-3 return for the same period, it was observed that there is a difference in showing receipts of income. Any of the service being provided by the appellant does not covered under the negative list. The appellant has neither claimed exemption under any notification nor produced any evidence to prove that they have provided any exempted service to their clients. The Apex Court has held in the case of Mysore Metal Industries (1988 (36) ELT 369 (SC)) that the burden is on the party who claims exemption, to prove the facts that entitled him to exemption. Accordingly, the appellant has contravened Section 68 of the Act read with Rule 6 of the Service Tax Rules, 1994 as they have failed to pay service tax at the rate specified in Section 66 in such manner and within such period as may be prescribed and also contravened Section 70 of the Act read with Rule 7 of the rules as they have failed to assess their tax liability properly and hence, short paid Service Tax amounting to Rs. 1,69,431/-.

(3) The appellant has deliberately suppressed the material facts from the department with an intention to evade payments of Service Tax and accordingly liable to penalty under the provisions of Section 78 of the Finance Act, 1994.

3. Being aggrieved with the impugned order, the appellant preferred this appeal on the grounds reproduced in following paragraphs.

3.1 The liability of service tax confirmed by the adjudicating authority vide impugned order has been worked out on differential income noticed on reconciliation of income as per books of accounts, details of which are as mentioned below:

Sl. No.	Particular	2016-17	2017-18
1	Net Taxable Income as per Balance Sheet	3297105	516461

2	Taxable Income as per ST-3 Return	2337262	346764
3	**Difference of Taxable Value**	**959843**	**169697**
4	Service Tax liability	143976	25445
5	Total Tax liability		169431

3.2 As regards the difference of taxable value, the appellant has submitted that the Service tax was paid by them at full rate in respect of Erection Commissioning service, whereas Service Tax in respect of Works Contract Service was paid after taking abatement as per Notification No. 24/2012 dated 06.06.2012 and deduction of eligible RCM as per Notification No. 30/2012 dated 20.06.2012. However, the adjudicating authority has not considered the said fact and not granted said deductions. The separate summary of such benefits are as under:

Sr. No.	Particular	2016-17	2017-18
1	Abatement admissible	57503	NIL
2	RCM	902340	169697
3	**Total**	**959843**	**169697**

3.3 The appellant has also submitted copies of the following documents in support of their contention.

(i) Copy of Profit & Loss Account for F.Y. 2016-17 and F.Y. 2017-18 (April-June)
(ii) Copy of Service Tax Return
(iii) Copy of working of Service Tax Calculation
(iv) Work Order of Client

3.4 The appellant has also contended that the notices for personal hearing for various dates were issued by the adjudicating authority within short time and in scenario of COVID 19 they were not been able to attend personal hearing. Accordingly, the adjudicating authority has passed impugned order without considering the fact of their case.

4. The appellant was granted opportunity for personal hearing on 23.06.2021 through video conferencing. Shri Arpan Yagnik, Chartered Accountant, appeared for personal hearing as authorised representative of the appellant. He re-iterated the submissions made in Appeal Memorandum.

5. I have carefully gone through the facts of the case available on record, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellant at the time of hearing. The issues to be decided in this case are whether the impugned order passed by the adjudicating authority confirming the demand is legal and proper or otherwise.

6. It is observed that the appellant has not made any submission against the demand confirmed by the adjudicating authority as per para-2.1 (i) above towards Cenvat Credit of Rs. 1,070/- wrongly availed on insurance and telephone services. Accordingly, I do not find any reason to intervene in the impugned order to the extent of the said demand of Rs. 1,070/- confirmed by the adjudicating authority alongwith interest and imposed penalty, as mentioned in para-2.1 (i), para-2.1 (iii) and para-2.1 (v) above. The same are held to be upheld against the appellant.

7. Further, as regards the demand confirmed against short payment of service tax detected during reconciliation of financial records with the ST-3 Returns, it is observed that the appellant has contended that they are entitled for the abatement, as mentioned in above para-3.2, as per Notification No. 24/2012 dated 06.06.2012. The relevant contents of the said notification are reproduced as below:

"Notification No. 24/2012 - Service Tax

"2. In the Service Tax (Determination of Value) Rules, 2006 (hereinafter referred to as the said rules), for rule 2A, the following rule shall be substituted, namely:-

"2A. Determination of value of service portion in the execution of a works contract.- Subject to the provisions of section 67, the value of service portion in the execution of a works contract , referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely:-

(i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract.

(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-

(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent of the total amount charged for the works contract;

(B) in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy percent of the total amount charged for the works contract;

(C) in case of other works contracts, not covered under sub-clauses (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property , service tax shall be payable on sixty per cent of the total amount charged for the works contract;"

7.1 I find that as per the summary of the reconciliation as mentioned at para-9 of the impugned order, the value of goods used in works contract service as mentioned at Sr. No. 5 of the table has been deducted from the 'Gross Income' reflected in Balance Sheet before arriving at the 'Net Taxable Income'. The same details have also been submitted by the appellant in their grounds of appeal submitted in the appeal memorandum. Further, I find that the benefit of abatement as per the provisions of Rule 2A (ii) of the Service Tax (Determination of Value) Second Amendment Rules, 2012 [notified under Notification No. 24/2012-Service Tax] is not available in the cases, wherein the value of service portion in case of a works contract is arrived after deduction of the value of the property in goods involved in the execution of such work contract in term of Rule 2A (i) of the said rules. The appellant has not made any further submission or produced any documents in support of their contention for abatement of an amount of Rs. 57,503/- as mentioned in para-3.2 above. Accordingly, I do not find any merit in the said contention of the appellant that they are entitled for the abatement and they are rejected.

8. Further, it is observed that the appellant has contended that they are entitled for the deduction of the amount towards eligible RCM, as mentioned in above para-3.2, as per Notification No. 30/2012 dated 20.06.2012. The relevant contents of the said notification are reproduced as below:

*"**Notification 30/2012 Service Tax dated 20.6.2012***

GSR.....(E).-In exercise of the powers conferred ....., the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-

I. The taxable services,

(A) (i) .....

(v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose [or security service- (Inserted by Notification No.45/2012-ST, dated 7-8-2012 w.e.f. 7-8-2012.)] or ***service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;***

(II) The extent of service tax payable thereon by the person who provides the service and any other person liable for paying service tax for the taxable services specified in paragraph I shall be as specified in the following table, namely: -] [Substituted by Notification No.7/2015-ST, dated 1-3-2015 w.e.f. 1-3-2015. Before substitution, it stood as under: "(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following table, namely: -"]

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by any person liable for paying service Tax other than the service provider
9	in respect of services provided or agreed to be provided in service portion in execution of works contract	50%	50%

8.1 The appellant has also produced sample copy of the Work Order issued by one of their client namely M/s. Godrej Properties Limited, Ahmedabad, in support of their contention that 50% of the Service Tax payable is to be paid by the recipient and accordingly at the time of reconciliation, the amount shown at Sr. No. (2) of the table at para-3.2

above would be deducted from the gross receipt as mentioned in their books of accounts. The appellant has also produced a summary (half yearly basis) in support of the said contention. On going through the submission of the appellant as well as the provisions of the Notification No. 30/2012 dated 20.06.2012, I find that the appellant is prima facie eligible for the benefit under said notification, which needs verification by the adjudicating authority.

8.2 Further, I find as per para-20 of the impugned order that the opportunity for personal hearing to the appellant was granted by the adjudicating authority three times on 17.07.2020, 21/22.07.2020 & 28.07.2020 and the appellant did not appeared for P.H. Hence, the case was decided by the adjudicating authority on the basis of the documents available on file only. The appellants in their appeal memorandum also contended that in the scenario of COVID 19, they could not be able to attend personal hearing and the order has been passed without considering the facts of their case.

8.3 Accordingly, I find that it would be in the interest of justice to remand the matter back to the adjudicating authority to examine the issue whether the appellant is eligible of the said Notification No. 30/2012 dated 20.06.2012 and to re-determine the short payment of Service Tax, if any, on verification of the relevant documentary evidences and decide it afresh following the principles of natural justice.

8.4 Further, the appellant is directed to produce the relevant documents, to the satisfaction of the adjudicating authority, in support of their claims for deduction of the amounts from the gross receipts on account of RCM as per the Notification No. 30/2012 dated 20.06.2012 before the adjudicating authority so as to examine the said issue on merits and decide it afresh.

9. On careful consideration of the relevant legal provisions and submission made by the appellant, I passed the Order as below:

(i) As regards the demand of Cenvat Credit wrongly availed on insurance and telephone services amounting to Rs. 1,070/- confirmed under the proviso to Section 73 (1) of the Finance Act, 1994 read with the provisions of Rule 14 (1) (ii) of the Cenvat Credit Rules and ordered to be recovered alongwith interest leviable thereon as well as the penalty imposed of Rs. 1,070/-

under Section 78 (1) of the Finance Act readwith Rule 15 (3) of the Cenvat Credit Rules, I uphold the impugned order passed by the adjudicating authority to that extent.

(ii) As regards the demand of Service Tax amounting to Rs.1,69,431/- confirmed on account of difference of receipt of income observed during reconciliation between financial statements and ST-3 return and the penalty of Rs.1,69,431/-imposed on the appellant, I reject the contention of the appellant in respect of abatement under Notification No. 24/2012-Service Tax, as discussed in para-7.1 above and the impugned order is upheld to that extent.

However, in respect of the contention of the appellant for the deduction of the amount towards RCM under Notification No. 30/2012 dated 20.06.2012, I set aside the impugned order to that extent and remand back the matter to the adjudicating authority to examine the said issue on merits as discussed in para-8.3 above and decide it afresh, following the principles of natural justice. The penalty may also be re-determined accordingly.

(iii) The appellant is directed to produce the relevant documents, to the satisfaction of the adjudicating authority, to substantiate their contention as made in the appeal memorandum.

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

23rd July, 2021.

(Akhilesh Kumar)
Commissioner (Appeals)

Attested

(M.P.Sisodiya)
Superintendent (Appeals)
Central Excise, Ahmedabad

By Regd. Post A. D
M/s. Rutvik Power Services,
40/2, Market Yard,
Visnagar-384315

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Principal Commissioner, CGST and Central Excise, Commissionerate-Gandhinagar.
3. The Deputy /Asstt. Commissioner, Central GST, Division-Mehsana, Commissionerate-Gandhinagar.
4. The Deputy/Asstt. Commissioner (Systems), Central Excise, Commissionerate-Gandhinagar.
5. Guard file
6. PA File