



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



☎ 26305065-079 :

टेलीफैक्स 26305136 - 079 :

DIN-20210964SW000000BC1D

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/154/2021-Appeal / 3012 70 3016
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-003-APP-022/2021-22**
 दिनांक Date : 24.08.2021 जारी करने की तारीख Date of Issue : 14.09.2021
 आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 7/DC-DK/Meh/20-21 dated 11.05.2020
 passed by the Deputy Commissioner (Prev.), Central GST & Central Excise,
 Gandhinagar Commissionerate.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant

M/s. Super Construction Co.,
 2, Shree Ram Complex,
 Radhanpur Road, Mehsana.

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

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

भारत सरकार का पुनरीक्षण आवेदन :

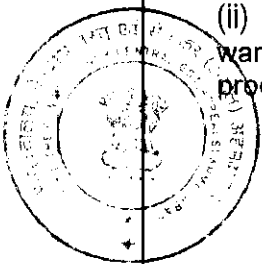
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी गंजिल, 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 प्रक्रिया के दौरान हुई हो।

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



- (क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित हैं।
- (A) In case of rebate of duty of excise on goods exported to any country or territory outside India, of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

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

- (c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.
- (1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता ई का मुख्यशीर्ष के अंतर्गत धारा 35-ई 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.

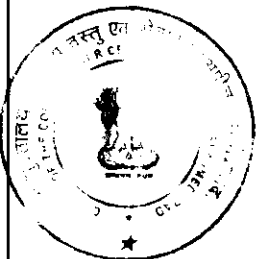
- (2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

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 अपील:-

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

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-ई एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत के अंतर्गत:-
- Under Section 35B/ 35E of Central Excise Act, 1944 or Under Section 86 of the Finance Act, 1994 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.



(2) The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of 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. Registrar 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 आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate 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 अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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 adjudicating authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

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

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

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

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

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

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

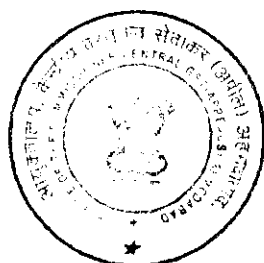
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

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

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

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

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



ORDER-IN-APPEAL

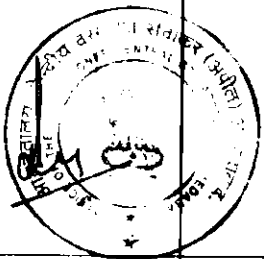
This appeal has been filed by M/s. Super Construction Co., 2, Shree Ram Complex, Radhanpur Road, Mehsana (hereinafter referred to as the 'appellant') against the Order – In – Original No. 7/DC-DK/Meh/20-21 dated 11.05.2020 (hereinafter referred to as the 'impugned order') passed by the Deputy Commissioner, Central GST and Central Excise, Preventive Section, Gandhinagar Commissionerate (hereinafter referred to as the 'adjudicating authority'). The appellant are engaged in civil construction work and registered with the erstwhile Service Tax department under Service Tax Registration No. AAFPS9337MSD001 dated 30.08.2013 under the category of "Construction services other than residential complex" and "Works Contract Service".

2. During the course of investigation conducted against the appellant, it was noticed that they had provided various Civil construction work, mainly as sub-contractor to the main contractor, and in addition to the same they had also provided civil construction work on their own. However, they had short paid/not paid service tax amount of Rs.33,08,108/- on total income received by them during the period from January-2013 to March-2014 under partial RCM under the provisions of Section 68(2) of the Finance Act, 1994 by availing the benefit of Notification Nos. 30/2012-ST dated 20.06.2012 & 24/2012-ST dated 06.06.2012 as amended. On conclusion of investigation, a Show Cause Notice bearing No.IV/16-61/PI/2013-14/Gr.-IV dated 02.03.2015 was issued by the Joint Commissioner of erstwhile Central Excise, Ahmedabad-III for demanding the short paid amount.

2.1. During the scrutiny of ST-3 returns filed by the appellant for the period F.Y. 2014-15 to June-2017, it was observed that they had filed their ST-3 Returns for the Work Contract Service and paid service tax on the value of taxable services declared in their ST-3 Returns under work contract service under the provision of Section 68(2) by availing the benefit of Notification Nos. 30/2012- ST dated 20.06.2012 i.e. R.C.M, 25/2012-ST dated 20/06/2012 & 24/2012-ST dated 06.06.2012.

2.2. However, on reconciliation of the figures in their Profit and Loss Account, Form 26AS with the ST-3 returns filed for the period F.Y. 2014-15 to 2017-18 (upto June-2017), it appeared that they had not discharged their service tax liability correctly for the service provided by them to their clients in as much as they had not disclosed the correct taxable value of service provided by them to their clients in their ST-3 returns filed with the Department for the relevant period.

2.3. The SCN in Para 6 lists out various income received by the appellant and in Para 8 and 8.1 extends exemption from payment of service tax under Notification No. 25/2012 – ST dated 20.06.2012 [Sl. No. 12(e) and 29 (h)] on account of services provided to "Local Authority".



2.4. The SCN in Para 9 further states that the appellant had carried out following works:

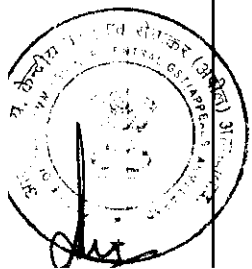
- (i) Permanent fencing to various well sites of ONGC, Mehsana as a sub-contractor of M/s. Varun Construction Co. till 14.06.2015 and as a sub-contractor of M/s. Varun Procon Pvt. Ltd. after 15.06.2015 to 30.06.2017 and
- (ii) Construction of boundary wall, security cabin, toilet block etc. at RTH Swarupganj, District-Sirohi (Raj.) as a sub-contractor of M/s. Natraj Construction Co., Radhanpur Road, Mehsana (Guj.) to whom work order was placed by M/s. Container Corporation of India Ltd. bearing No. CON/EP/Swarupganj/B.Wall/T.I/2013 dtd. 25.02.2015.

2.5. It was alleged that the appellant during the period from 01.04.2014 to 14.06.2015 had provided service as a sub- contractor to a proprietorship / partnership firms viz. M/s. Varun Construction Co. (Main Contractor), who is not a body corporate and therefore the benefit of Notification No. 30/2012-ST dated 20.06.2012 cannot be extended to the service provider and service provider is required to pay 100% of service tax at the rate prescribed under Section 66B of the Finance Act, 1994.

2.6. Further, the services provided by the appellant during the period from 15.06.2015 to 30.06.2017 to their main contractor i.e. M/s. Varun Procon Pvt. Ltd. and during the period from 01.04.2015 to 31.03.2017 to their main contractor i.e. M/s. NCC Infraspace Pvt. Ltd., being Private Limited firms, were eligible for benefit of Notification No. 30/2012 dated 20/06.2012.

2.7. The SCN has quantified short payment of service tax by the appellant under "Work Contract Service" as per table given below:

ABSTRACT / DETAILS SHOWING THE S.TAX AMOUNT TO BE REVOCERED FROM M/S. SUPER CONSTRUCTION CO. FOR THE PERIOD FROM 01.04.2014 TO 30.06.2017						
S.No.	Decription	2014-15	2015-16	2016-17	2018-17	Total
1	Gross Income as per P.L.	67183579	72947442	73025492	13552726	213156513
2	Gross Income as per 26AS	68389419	72947442	73025492	0	2143662353
3	Taxable Gross Income	68389419	72947442	73025492	13552726	214362353
4	Less: S.Tax Amount (As per 26AS Form)	1205288	920980	850500	0	2977302
5	Gross Taxable Income (Excluding ST)	67183597	72026462	72174992	13552726	211385051
6	Less: (i) Exemption as per 29 (h) of Noti.No. 25/2012-ST	18860256	51433989	46634611	13552726	116928856
7	Taxable	48323341	20592473	25540381	0	94456195

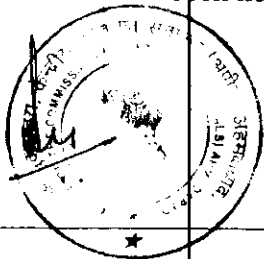


	income					
8	Less : (ii) Abatement as per Noti.No. 24/2012-ST	28994005	12355484	15324229	0	56673718
9	Taxable value after abatement	19329336	8236989	10216152	0	37782477
10	Less : (iii) RCM as per Noti.No. 30/2012-ST	0	4118495	5108076	0	9226571
11	Net Taxable Value	19329336	4118495	5108076	0	28555907
12	Value as per ST-3 Returns	5943009	0	4146330	0	10089339
13	Differential Taxable Value	13386327	4118495	961746	0	18466568
14	Total S. Tax due on Net Taxable Value	2389106	597182	766221	0	3752509
15	S.Tax paid as per S.T.-3 Returns	734556	*666167	621948	0	2022671
16	Differential S.Tax to be recovered	1654550	-68985	144273	0	1729838

*The assessee has paid tax during Financial year 2015-16 but not shown in return which has been adjusted against the total tax liabilities.

2.8. The appellant were issued a SCN demanding differential service tax amount of **Rs.17,29,838/-** under Section 73 of the Finance Act, 1994 along with Interest under Section 75 and for imposing penalties under Section 76, 77 and 78 of the Act. Late fee of Rs. 40,000/- was also demanded under Rule 7C of Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994 for late filing/non filing of ST-3 returns.

3. The adjudicating authority has vide the impugned order confirmed the demand as proposed in the SCN along with interest and penalty under Section 76, 77 and 78 of the Finance Act, 1994. It has been held by the adjudicating authority that the only contention of the appellant was that they had worked as sub-contractor to M/s Varun Construction Co., who has received contract from M/s ONGC. In their case, the main contractor has paid the service tax, who in turn submitted the invoices to M/s ONGC, who happened to be a body corporate. Once main contractor has paid the tax, the demand thereof from them would amount to double taxation. Further, the whole exercise of payment of service tax by them would have resulted into revenue neutral exercise since the tax if paid by them was to be available to the main contractor as credit of CENVAT. The adjudicating authority while rejecting their contentions held that very concept of CENVAT is defeated, if the revenue neutrality is taken into consideration. Further, he relied upon case laws of CANVASMTECHNOLOGIES LTD. Vs. COMMISSIONER OF C.EX. & S.T., NOIDA as reported in 2015 (40) S.T.R. 525 (Tri. – Del.) where it has been held that “No statutory or constitutional provisions supporting notion that in case of

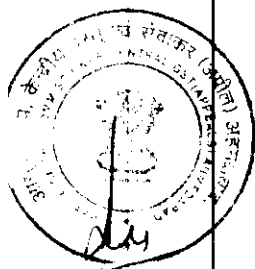


revenue neutrality liability to tax abates –Assessee not able to make out case for full waiver of pre-deposit hence, directed to make pre-deposit of 50% of adjudicated Service Tax liability along with proportionate interest within four weeks-Section 35F of Central Excise Act, 1944 as applicable to Service Tax Section 83 of finance Act, 1994. [paras 3,4 5]”. He further relied upon case law of COMMISSIONER OF C.EX. CHANDIGARH as reported in 2011 (265) to hold that mere revenue neutrality would not abate the liability of a tax payer from paying the applicable tax.

4. Being aggrieved with the impugned order, the appellant has filed appeal on following grounds:

- i) It can be seen from Chart at Para 16 of the SCN that appellant has claimed exemption, abatement as well as RCM as per provision of the act which has been verified by the learned officer and granted same during course of verification. The issue relate to mainly for following two issues:
 - a. Execution of work for Varun Construction, a Main contractor for ONGC in F.Y. 2014-15, on which main contractor has discharged liabilities and which has not been considered by learned officer. The demand of service tax involved is Rs. 16,54,550/-.
 - b. Difference in tax liability on account of reconciliation amounting to Rs. 75,288/- for F Y. 2016-17.
- ii) On the first issue, service tax for taxable value has been deposited in government account and there is no loss of revenue for the department. During course of adjudication, details was submitted which was not considered by learned officer. As appellant has work to the ONGC, a PSU, who is the ultimate employer of the work. It can be said that ONGC is PSU and body corporate and ultimate work has been supplied to ONGC only. Thus, complying with requirement of PSU and contract, the main contractor has deposited tax under Reverse Charge Mechanism under Notification 30/2012 Service Tax dated 20.06.2012.
- iii) As regards the second issue, it is submitted that as per Para 16 of the SCN tax working, an amount of Rs. 8,50,500/- was deducted towards service tax for arriving at Gross Taxable Value but did not set off the challans amounting to Rs. 8,50,500/- while arriving at difference tax value. The learned officer did not verify the facts submitted by them and raised demand at his discretion. They submitted Chart as per details below in support of their contention:

F Y 2016-17			
Sr. No	Description	Amount as per SCN	Amount as per appellant
1	Gross Income as per P&L	73025492	73025492
2	Gross Income as per 26AS	73025492	73025492



3	Gross Taxable Income	73025492	73025492
4	Less; Service Tax amount	850500	850500
5	Gross Taxable Income	72174992	72174992
6	Less: Exemption as per 29(h) of Notification No 25/2012-ST	46634611	46634611
7	Taxable Income	25540381	25540381
8	Less:(ii) Abatement as per Notification No 24/2012-ST	15324229	15324229
9	Taxable value after abatement	10216152	10216152
10	Less(iii) RCM as per Notification No 30/2012ST	5108076	5108076
11	Net Taxable Value	5108076	5108076
12	Value as per ST 3 Return	4146330	4146330
13	Differential Taxable Value	961746	961746
14	Total S Tax due on Net Taxable Value	766221	766221
15	S Tax Paid as per ST 3 Returns	621948	850500 (Copy of Challan attached)
16	Differential	144273	(84279) Excess Paid

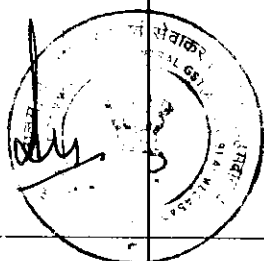
Thus, they have paid tax amounting Rs. 84,279/- excess as discussed supra. They have paid tax amounting Rs. 8,50,500/- in F Y 2016-17.

iv) As per Para 16 of SCN, it can be deduced that they have paid excess challan amounting Rs. 1,53,264 (Rs. 68,985 in FY 2015-16 +Rs. 84279 in FY 2016-17).

5. Personal hearing in the case was held on 23.06.2021. Mr. Arpan Yagnik, Chartered Accountant, appeared for the hearing for appellant. He re-iterated submissions in the appeal memorandum.

6. I have carefully gone through the case records and submissions made by the appellant in the appeal memorandum. It is observed that the issue to be decided in the case is whether the impugned order confirming the demand against the appellant by denying the benefits under Notification No. 30/2012 – ST dated 20.06.2012 is legally sustainable or otherwise.

7. I find that the appellant has contended that they had provided services to M/s Varun Construction Co., who had received contracts from M/s ONGC (a body corporate) and had paid service tax liability under Reverse Charge Mechanism under Notification No. 30/2012 Service Tax dated 20.06.2012. Since the main contractor had discharged the service tax liability, they were not required to pay any tax as it would amount to double taxation. Further, the entire exercise would be revenue neutral as the tax paid by them would be eligible as CENVAT to M/s Varun.



8. The relevant legal provisions contained under Notification No. 30/2012 Service Tax dated 20.06.2012 is reproduced below:

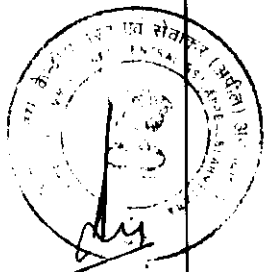
(V) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose [or security service- (Inserted by Notification No. 45/2012-ST,dated 7-8-2012 w.e.f.7-8-2012.)] or service 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;

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%

It is undisputed that M/s Varun to whom the appellant has provided services as sub-contractor is not a body corporate. Hence, the appellant is not eligible for any benefit under the Notification No. 30/2012-Service Tax dated 20.06.2012 and hence the adjudicating authority has in the impugned order correctly upheld the demand against them.

8.1. As regards the appellant contention that there was no service tax liability on them as their main contractor had discharged service tax liability, I find that there has been held in various judicial pronouncements that the discharge of service tax liability by main contractor can not absolve the sub-contractor from discharge of their service tax liability. The Hon'ble Principal Bench, CESTAT, New Delhi in Murari Lal Singhal Versus CCE, Jaipur – I reported as 2019 (25) GSTL 45 (Tri. – Delhi) held as under:

Service Tax - Liability of sub-contractor - It is not same as liability of main contractor - Sub-contractor cannot step into shoes of main contractor - Hence, discharge of tax liability by main contractor cannot discharge liability of sub-contractor - Use of sub-contractor's services by main service provider for completion of his work does not alter taxability of sub-contractor service, which are input services - Service Tax is leviable irrespective of whether it is provided by sub-contractor or used as input services. - *The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the*



service provider. Such proposition finds support from the basic rule of Cenvat credit and service of a sub-contractor may be input service provided for a contractor if there is integrity between the services. Thus tax paid by a sub-contractor may not be denied to be set off against the ultimate Service Tax liability of the contracts if the contractor is made liable to Service Tax for the same transaction, though the exchequer cannot be enriched on account of double taxation. Thus, liability of sub-contractor to pay tax depends on the contract between him and main contractor and thus varies from case to case and even from contract to contract. The adjudicating authority has also relied upon the said Circular. Hence we do not find any error in the findings qua this particular issue. Order to this extent is upheld. [para 11.1]

8.2. Further, similar view has been held by the Hon'ble CESTAT, Ahmedabad in Saurashtra Cricket Association Vs. CCE and ST, Rajkot reported as 2020 (33) GSTL 215 (Tri. - Ahmd).

8.3. It is further observed that the Larger Bench of the Hon'ble Tribunal, Principal Bench, New Delhi in the case of Commissioner of Service Tax, New Delhi Vs. Melange Developers Private Limited reported as 2020 (33) GSTL 116 (Tri. - LB) considered the issue as to whether a sub-contractor is liable to pay Service Tax even if the main contractor has discharged the Service Tax liability on the gross amount. It has been observed by the Larger Bench of the Hon'ble Tribunal as under:

"29. The submission of the Learned Counsel for the Respondent regarding 'revenue neutrality' cannot also be accepted in view of the specific provisions of Section 66 and 68 of the Act. A sub-contractor has to discharge the Service Tax liability when he renders taxable service. The contractor can, as noticed above, take credit in the manner provided for in the Cenvat Credit Rules of 2004.

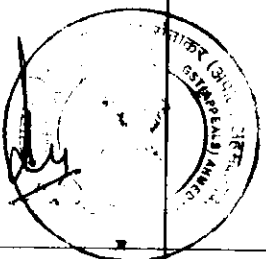
30. Thus, for all the reasons stated above, it is not possible to accept the contention of the Learned Counsel for the Respondent that a sub-contractor is not required to discharge Service Tax liability if the main contractor has discharged liability on the work assigned to the sub-contractor. All decisions, including those referred to in this order, taking a contrary view stand overruled.

31. The reference is, accordingly, answered in the following terms :

"A sub-contractor would be liable to pay Service Tax even if the main contractor has discharged Service Tax liability on the activity undertaken by the sub-contractor in pursuance of the contract."

32. The Appeal shall now be placed before the Division Bench for hearing."

8.4. Respectfully following the above judicial pronouncements of the Hon'ble Tribunal, it is held that the appellant is liable to discharge service tax liability in respect



of services provided to M/s Varun. The demand confirmed vide the impugned order is upheld.

9. As regards the contention of the appellant regarding non- consideration of challan while computing the tax liability for the period FY 2016-17, the appellant has submitted copies of challans evidencing payment for relevant quarters of the Financial Year, which needs verification. Hence, the matter needs to be remanded back to the adjudicating authority for verification of challans produced for the FY 2016-17 for discharge of their service tax liability.

10. In view of the above discussions, the appeal of the appellant is rejected being devoid of any merits except for their contention on non-consideration of an amount of service tax of Rs.8,50,500/- paid by them against the liability worked for the year 2016-17 for which the appeal is allowed by way of remand to the adjudicating authority. The adjudicating authority may cause necessary verification of the appellant's contention on payment of service tax of Rs.8,50,500/- in this regard and pass a fresh order accordingly in the matter. The appellant is directed to produce all the relevant necessary documents in support of their contention before the adjudicating authority for verification.


11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

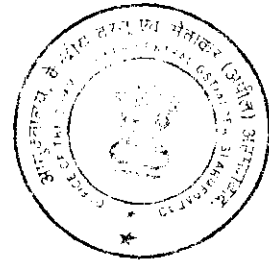
The appeal filed by the appellant stands disposed off in above terms.

(Akhilesh Kumar)
Commissioner (Appeals)

Date: 24.08.2021

Attested


(Anilkumar P.)
Superintendent (Appeal)
CGST, Ahmedabad.



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4. The Asstt. Commissioner, HQ (System), CGST & Central Excise, Gandhinagar Comm'rate.
- 2 5. Guard File.
6. P.A. File.