



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
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आजादी का  
अमृत महोत्सव

**By Regd. Post**

DIN No.: 20230264SW0000224376

(क)	फाइल संख्या / File No.	GAPPL/COM/STD/204/2022-APPEAL/8466-30
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-129/2022-23 and 27.02.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	28.02.2023
(ङ)	Arising out of Order-In-Original No. AHM-CEX-003-REASSIGNED-AC-NLC-045-21-22 dated 16.06.2022 passed by the Assistant Commissioner (Sevottam), CGST & C.Ex., HQ, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Office of the Assistant/Deputy Commissioner, CGST & CE, Division-Mehsana, Gandhinagar Commissionerate, 2nd Floor, Sardar Patel Vyapar Sankul, Mal Godoun Road, Mehsana-384002
(छ)	प्रतिवादी का नाम और पता / Name and Address of the Respondent	M/s S.R. Projects (PAN-ACVFS3887N), F-12, Shivam Complex, Opp. Janpath Hotel, Becharaji Road, Palavasna, Mehsana, Gujarat-384003

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

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

भारत सरकार का पुनरीक्षण आवेदन:-

**Revision application to Government of India:**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में 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 :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> 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-  
ibid :-



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

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

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

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

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

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

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो 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।

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

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

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

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

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

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-  
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. 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 पढी 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 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 अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है। Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

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

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो 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."

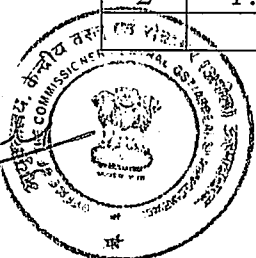


अपीलिय आदेश / ORDER-IN-APPEAL

The Assistant Commissioner, CGST, Mehsana Division, Commissionerate - Gandhinagar (hereinafter referred to as the 'Appellant Department'), in pursuance of the Review Order No.10/2022-23 dated 16.09.2022 issued under Section 84 of the Finance Act, 1994 from F.No. GEXCOM/REV/ST/OIO/25445/2022-REV-O/o COMMR-CGST-GANDHINAGAR by the Commissioner, CGST & Central Excise, Gandhinagar, has filed the present appeal against the Order-in-Original No.AHM-CEX-003-REASSIGNED-AC-NLC-045-21-22 dated 16.06.2022 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, CGST, Mehsana Division, Commissionerate - Gandhinagar (hereinafter referred to as the "adjudicating authority") in the matter of M/s. S.R. Projects, F-12, Shivam Complex, Opp. Janpath Hotel, Becharaji Road, Palavasana, Mehsana - 384003 (hereinafter referred to as the "respondent").

2. Facts of the case, in brief, are that the respondent was holding Service Tax Registration No. ACVFS3887NSD001 for providing taxable services. Analysis of 'Sales/Gross Receipts from Services' (Value from ITR)' and 'Gross Value of Services Provided' was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y.2015-16 and F.Y.2016-17 and details were shared with the CBIC. On perusal of the analysis, discrepancies were observed in the total income declared in ITR as compared to the ST-3 returns of the respondent. Letter dated 08.05.2020 was issued to them requesting them to provide details of services provided during the F.Y.2015-16 and F.Y.2016-17. However, they did not respond. It appeared to the jurisdictional officers that the nature of activities carried out by the respondent as per the Income Tax data were covered under the definition of service and hence they were liable to levy of Service Tax at appropriate rate. Accordingly, the differential Service Tax payable by the respondent was determined on the basis of difference between the value of "Sales/Gross Receipts (derived from Value reflected in ITR)" as provided by the Income Tax Department and the taxable Value declared in their ST-3 returns for the Financial Year 2015-16 and F.Y.2016-17 as below:

Sr. No	Period	Differential Taxable Value as per Income Tax data (in Rs.)	Rate of Service Tax including cess.	Service Tax liability (in Rs.)
1	F.Y.2015-16	65,92,605/-	14.5%	9,55,928/-
2	F.Y.2016-17	37,66,192/-	15%	5,64,929/-
	Total	1,03,58,797/-		15,20,857/-



2.1 A Show Cause Notice was issued to the respondent from F.No. V.ST/11A-23/SR/2020-21 dated 29.06.2020 (in short SCN) vide which it was proposed to demand and recover Service Tax amounting to Rs.15,20,857/- under proviso to Section 73(1) of the Finance Act,1994 alongwith interest and penalties were proposed under Section 77 (2) , 77C and 78 of the Finance Act,1994 (FA,1994).

2.2 The SCN was adjudicated by the adjudicating authority vide the impugned order, wherein the proceedings initiated against the respondents vide SCN was dropped.

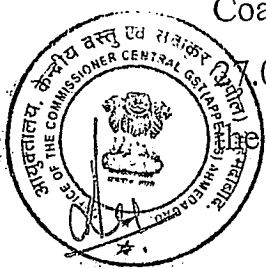
3. Being aggrieved with the impugned order, the Appellant Department has preferred this appeal on the grounds as mentioned in the subsequent paragraphs, with a request to set aside the impugned order and remand the matter back for fresh adjudication.

3.1 The respondent was awarded the Job of carrying out work of "1829 dia MS Pipe laying and related works" at Surendra Nagar, Gujarat vide Work Order dated 11.05.2016 by M/s Larsen & Toubro Limited (L&T). Under the above work order, the respondents provided 'Pure Service' (without materials) and was liable to pay Service Tax at full rate. During the period F.Y.2016-17, the respondents have issued 06 Invoices to M/s L&T for total taxable value – Rs.29,69,195/- and charged Service Tax amounting to Rs.4,37,440/-. This amount was also deposited with the government.

3.1.1 The adjudicating authority at Para-27 of the impugned order has observed that the respondents have discharged their liability of Service Tax amounting to Rs.4,37,440/- prior to issuance of the SCN, arising out of their services provided to non-governmental authorities during the period F.Y.2016-17. The amount was deposited vide GAR-7 Challans as below:

Sr. No	GAR-7 Challan No / Date	Amount (in Rs.)
1	00062 / 18.07.2016	1,46,484/-
2	00099 / 09.06.2017	83,755/-
3	00101 / 09.06.2017	1,42,590/-
4	00001 / 09.06.2017	64,612/-
	Total	4,37,441/-

3.2 The respondent was awarded the Job of carrying out work of 'Field Joint Coating (internal and external)' at Rajkot, Gujarat vide Work Order dated 08.08.2015 by M/s Larsen & Toubro Limited (L&T). Against the said work order the respondents issued 06 Invoices to M/s L&T as below:



Sr. No	Invoice No & Date	Amount Charged for Services (in Rs.)	VAT Charged
	<b>F.Y. 2015-16</b>		
1	01 / 24.09.2015	12,53,263.50 /-	0
2	02 / 21.10.2015	24,00,000 /-	0
3	03 / 21.12.2015	6,40,850 /-	0
	<b>F.Y.2016-17</b>		
4	04 / 04.04.2016	2,77,200/-	0
5	05 / 17.05.2016	13,00,000/-	0
6	06 / 03.11.2016	2,14,800/-	0

3.3 The respondent was awarded the Job of carrying out work of 'False Ceiling fixing and Pipe line fabrication work and laying' at Surendra Nagar, Gujarat vide Work Order dated 27.11.2015 by M/s L&T. L&T, vide a revised LOI dated 08.04.2016, also awarded the respondent the Job of 'commence bore hole drilling works and fabrication and erection of structural steel and dismantling of structural steel at Surendra Nagar, Gujarat. Against the said work order the respondents issued Invoices as below:

Sr. No	Invoice No & Date	Amount Charged for Services (in Rs.)	VAT Charged
	<b>F.Y. 2015-16</b>		
1	AC/L&T/01 dated 24.09.2015	6,37,385 /-	0
2	AC/L&T/02 dated 14.01.2016	8,20,998 /-	0
3	AC/L&T/03 dated 16.02.2016	22,98,492 /-	0
	<b>F.Y.2016-17</b>		
4	AC/L&T/04 dated 18.04.2016	1,74,996/-	0

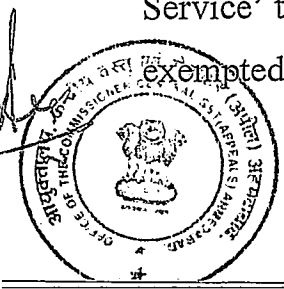
3.3.1 Under the above work orders, the respondents, being sub-contractors, had provided pure labour service (without material) which are liable for Service Tax after the introduction of the negative list of services

3.4 The adjudicating authority has grossly erred in dropping the demand of Service Tax amounting to Rs.15,20,857/- holding that the work related to pipeline for water supply carried out by the respondents on behalf of the main contractors (i.e. M.s SSNNL) was exempted vide Sr.No.12(e) of Notification No.25/2012-ST dated 20.06.2012 and the respondents, being sub-contractors, were also exempted vide Entry No.29(h) of Notification No.25/2012-ST dated 20.06.2012. Entry No. 29 (h) of Notification No. 25/2012-ST dated 20.06.2012 reads as under:

29. Services by the following persons in respective capacities -

...  
(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

Hence, vide the above sub clause (h), a sub-contractor providing 'Works Contract Service' to the main contractor also providing 'Works Contract Service' which are exempted in nature, are only eligible for the exemption.



3.5 Further, in terms of Section 65B (54) of the FA,1994 'Works Contract Service' is defined as:

*(54) "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;*

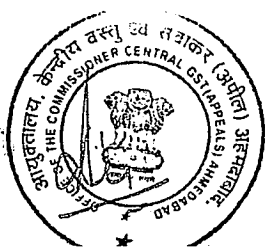
Therefore, for any contract to be categorized as 'Works Contract Service', two essential ingredients are (i) the goods incorporated in the contract are leviable to VAT or Sales tax as sale of goods and (ii) the contract must be for carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or part thereof in relation to such property.

3.6 Considering the above, and the facts of the documents submitted by the respondent before the adjudicating authority, the services provided by the respondents in completion of their 'Work Orders' given by L&T detailed above clearly reflect that they have provided 'pure labour service' only. Hence, the said services cannot be categorized under 'Works Contract Service'. Further, the respondents have not produced any document to prove that the services provided by the main contractor (L&T) fall under the category of 'Works Contract Service'. Therefore, the adjudicating authority appears to have not examined the factual position of the issue involved in the case and relevant exemption entries and went on to drop the demand raised vide the SCN.

4. Personal Hearing in the case was held on 10.01.2023. Shri Rajesh Mishra, Partner of the Respondent, appeared for hearing. He stated that the adjudicating authority had correctly dropped the demand and they have already discharged the service tax liability correctly.

4.1 Subsequently, a cross-objection to the appeal was filed by the respondents on 13.01.2023 wherein they submitted that:

- The departments contention of providing 'pure labour services' was incorrect as they have provided 'Works Contract Service' of pipeline for water supply with material and labour, wherein the materials were supplied free by the main contractor, and labour was arranged by the respondents.



Hence, such services are eligible for exemption as per Sr.No.12(e) and 29(h) of the Notification No. 25/2012-ST dated 20.06.2012.

- That L&T was the main contractor, who was awarded the contract by M/s SSNNL and L&T had further sub-contracted the works to the respondents. They also contended that in case of payments of Service Tax made by the respondent as Sub-contractors, the same would be available to L&T (main contractor) as Cenvat Credit and the entire exercise would be revenue neutral.
- SSNNL was a government entity incorporated under the Companies Act, 1956 wherein 100% equity was owned by Govt. of Gujarat. SSNNL has been providing drinking water facility to various rural and urban areas of Gujarat state on behalf of the government of Gujarat.
- In support of their contentions they cited the following citations :
  - Decision of CESTAT, WZB, Ahmedabad in the case of Nexcel Infra Vs C.C.E & S.T., Vadodara – I in Service Tax Appeal No.10220 of 2022.
  - Decision of CESTAT in the case of P.R.Rolling Mills Pvt.Ltd – 2010 (249) ELT 232 (Tri.Bang.) also upheld by the Hon'ble Supreme Court reported as 2010 (260) ELT A84 (SC).
  - Decision of CESTAT in the case of Popular Vehicles & Services Ltd. Vs Commissioner of Cen.Ex., Kochi reported as 2010 (18) STR 493 (Tri.Bang.)
  - Decision of CESTAT, WZB, Ahmedabad in the case of Dineshchandra R Agarwal Infracon Pvt.Ltd Vs CCE, Ahmedabad reported as 2010 (18) STR 39 (Tri.Ahmd).
  - Decision of CESTAT, SZB, Chennai in the case of Sakthi Auto Components Ltd. Vs Commissioner of C.Ex., Salem reported as 2009 (14) STR 694 (Tri.Chennai).

5. I have carefully gone through the facts of the case, grounds of appeal, the oral submissions made by the respondent at the time of personal hearing and the additional submission made by them. It is observed that the issue to be decided in this case is whether the impugned order passed by the adjudicating authority, dropping the Service Tax demand of Rs. 15,20,857/-, in respect of services



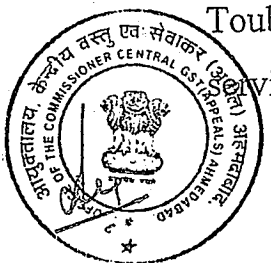


rendered by the respondent to L&T by considering them as exempted, is legal and proper or otherwise. The demand pertains to period F.Y. 2015-16 and F.Y. 2016-17.

5.1 I find that the SCN was issued on the basis of data received from Income Tax department. The respondents are registered with the department and had filed their ST-3 Returns during the period F.Y.2015-16 and F.Y.2016-17. The SCN did not classify the services of the respondent under any category and the demand has been raised on the basis of differential value of services appearing in the Income Tax Returns compared with the value shown in the ST-3 Returns filed by the respondent. On the basis of the submissions made by the respondent, the adjudicating authority has found that during the period F.Y. 2015-16 and F.Y. 2016-17, the respondents had provided 'Service' of work contract as sub-contractors to the main contractors M/s L&T and other firms in execution of work related to Pipe line for water supply. It was further held that the respondent had discharged their liability of Service Tax amounting to Rs. 4,37,440/- on a taxable value of Rs. 29,69,197/-, prior to issuance of the SCN, arising out of their services provided to non-governmental authorities during the period F.Y.2016-17. For the remaining amount of Rs. 73,89,599/- [Rs. 65,92,605/- for F.Y. 2015-16 and Rs. 7,96,994/- for F.Y. 2016-17], the respondent had provided services for pipeline related work for water supply to the government authority. It was also held that the respondent is a sub-contractor and L&T is the main contractor and has worked for Sardar Sarovar Narmada Nigam Limited (SSNNL).

5.2. It is the contention of the appellant department that the services provided by the respondents in completion of their 'Work Orders' given by L&T are for provision of 'pure labour service' only, which cannot be categorized under 'Works Contract Service'. Further, the respondents have not produced any document to prove that the services provided by the main contractor (L&T) fall under the category of 'Works Contract Service'.

6. It is observed that the respondent was awarded the job of carrying out work of "1829 mm dia MS Pipe laying and related works" at Dahej Water Supply Project – Miyagam Intake, vide Work Order dated 11.05.2016 by M/s Larsen & Toubro Limited (L&T). Under the above work order, the respondents had provided service in the nature of 'Regular Labour without materials'. They had, during the



period F.Y. 2016-17, issued 06 Invoices to M/s L&T for total taxable value of Rs. 29,69,195/- and charged Service Tax amounting to Rs. 4,37,440/-. They had discharged the service tax amounting to Rs.4,37,441/- as per details given in the table below:

Sr. No	Tax Invoice No.& Date	Taxable Value (in Rs.)	Amount of Service Tax Charged (in Rs.)	GAR-7 Challan No.	GAR-7 Challan Date	Amount of Service Tax paid vide Challan (in Rs.)
1	1 / 18.05.2016	10,10,233.62/-	1,46,484/-	00062	18.07.2016	1,46,484/-
2	2 / 11.06.2016	5,77,620.03/-	83,755/-	00099	09.06.2017	83,755/-
3	3 / 01.07.2016	3,26,929.14/-	49,039/-	00101	09.06.2017	1,42,590/-
4	4 / 01.09.2016	6,23,669.64/-	93,550/-			
5	5 / 13.10.2016	1,82,350.86/-	27,353/-	00001	09.06.2017	64,612/-
6	6 / 24.11.2016	2,48,391.72/-	37,259/-			

From the above, it is evident that the respondent has made payment of Service Tax in respect of all the Invoices/Bills detailed above. This is not disputed in the appeal filed by the department. However, I find that there appears to be delay in payment of service tax and consequently, the liability for payment of interest arises on the delayed payment. No findings in this regard is recorded by the adjudicating authority in the impugned order.

7. It is further observed that the respondents have claimed and availed exemption from Service Tax under clause 12(e) of the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 for a taxable value of Rs. 65,92,605/- during the period F.Y.2015-16 and for a taxable value of Rs.7,96,994/- during the period F.Y. 2016-17 totally amounting to Rs. 73,89,599/-.

7.1. It is observed in this regard that the respondent was awarded the work of carrying out work of 'Field Joint Coating (internal and external)' at Link 3 Package 3, Sauni Yojana, Rajkot, Gujarat vide Work Order (WO) dated 27.08.2015 by M/s Larsen & Toubro Limited (L&T). The WO Type mentioned is 'Regular Labour with Materials' and the details are given therein. The value involved in the Work Order is Rs. 48,64,500/-.

7.2. It is further observed that the respondent was awarded the work of 'False Ceiling fixing and Pipe line fabrication work and laying' at SSNNL – SBC PS 4-5, Dudhrej Pumping Station, Surendra Nagar, Gujarat vide Work Order dated 23.08.2015 by M/s L&T. WO Type mentioned is 'Regular Labour with Materials'



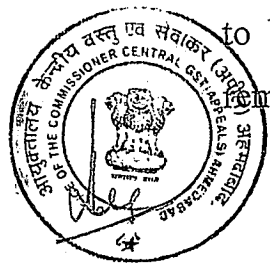
and the details are given therein. The value involved in the Work Order is Rs. 17,97,410/-. Further, L&T had, vide a revised LOI dated 08.01.2016, also awarded the respondent the work to 'commence Bore hole drilling works and Fabrication and Erection of Structural Steel and Dismantling of Structural Steel' at Surendra Nagar, Gujarat for SBC PS 4&5. It is observed from the details of work order in the Annexure-A that the scope of work included man, material and machinery in the scope of sub-contractor.

7.3. It is apparent from the details of work orders mentioned above that the respondent had provided service which included man and material. Hence, I find no merit in the contention of the appellant department that the services provided by the respondent included only labour supply and hence they were liable for payment of service tax. Merely not charging/paying VAT cannot be the sole ground for not treating the contracts in question under Works Contract, when the wordings clearly mention the same to be in the nature of works contract in as much as the contracts clearly stipulated material and machinery in the scope of work. Hence, the same is rejected being not supported by the relevant documents available on record.

8. As regards the contention of the appellant department that the respondents have not produced any document to prove that the services provided by the main contractor i.e. L&T fall under the category of 'Works Contract Service', it is observed from the records that the work contracted to the respondent are squarely covered under the definition of 'Works Contract Service' as defined under Section 65B(54) of the Finance Act, 1994 during the relevant time, as the same included in its scope supply of both labour, machinery and material. Once the scope of work entrusted to the sub-contractor fall within the scope of works contract, the contention of the main contractor not providing works contract service is merely a hypothetical proposition, liable to be rejected as being devoid of merits.

9. In view of the discussions made above, I find that there is no merit in the department appeal as regards the dropping of demand mentioned at Para 2 (a) and Para 2 (b) of the appeal memorandum. As regards the issue listed at Para 1 (a) of the appeal memorandum, I find that the appellant department has not made any contentions to be considered in the appeal proceedings. However, this aspect needs to be examined for correct payment of service tax liability. I find it proper to

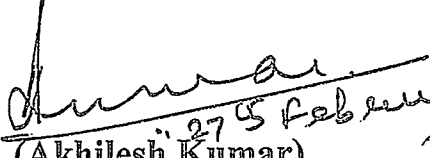
mand back the impugned order to the adjudicating authority for examination of




the aspect of payment of interest on issue listed as Para I(a) of the appeal memorandum.

10. In view of the discussions made above, the appeal filed by the Appellant Department against the impugned order is dismissed being devoid of merits. However, the impugned order is remanded back to the adjudicating authority for limited purpose of examination of payment of interest on issue at Para I (a) of the appeal memorandum.

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

  
(Akhilesh Kumar)  
27 Feb 2023  
Commissioner (Appeals)  
Date: 27th February, 2023

Attested

  
(Somnath Chaudhary)  
Superintendent (Appeals)  
CGST & CE, Ahmedabad



By Regd. Post A. D

1. The Assistant Commissioner  
CGST, Division- Mehsana,  
Commissionerate - Gandhinagar

Appellant

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Respondent

Copy to :

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