



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 SPEED POST

DIN:- 20230364SW00004984FA

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/1806/2022-APPEAL / 19288-32
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-140/2022-23 and 06.03.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	10.03.2023
(ङ)	Arising out of Order-In-Original No. AC/S.R./32/ST/KADI/2021-22 dated 31.03.2022 passed by the Assistant Commissioner, CGST, Division-Kadi, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s MBS Enterprise, B-25, Vrundavan Society, Kadi-Kalol Road, Kadi, Mehsana, Gujarat-382715

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, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :-

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

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



of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

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

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 होतो 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-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."

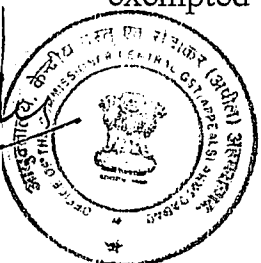


अपीलियआदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s. M.B.S Enterprise, B-25, Vrundavan Society, Kadi Kalol Road, Kadi, Mehsana – 382715, Gujarat (hereinafter referred to as the appellant) against Order in Original No. AC/SR/32/ST/KADI/2021-22 dated 30.03.2022 [hereinafter referred to as the “*impugned order*”] passed by the Assistant Commissioner, CGST, Division: Kadi, Commissionerate: Gandhinagar [hereinafter referred to as the “*adjudicating authority*”].

2. Briefly stated, the facts of the case are that the appellant were engaged in providing Manpower Recruitment/Supply Agency Services and holding Service Tax Registration No. ARFPM6496CSD001. An analysis of ‘Sales/Gross Receipts from Services provided’, ‘Total amount paid /credited under Sections 194C, 194H, 194I, 194J’ and ‘Gross Value of Services Provided’ was undertaken by the Central Board of Direct Taxes (CBDT) for the period F.Y.2014-15 and the details of analysis were shared with the Central Board of Indirect Taxes and Customs (CBIC). As per the information received from the Income Tax department, it appeared that the appellant had misdeclared the ‘Gross value of Service Provided’ in the ST-3 returns filed by them for the F.Y. 2014-15. It further appeared that for the period F.Y. 2014-15, an amount of Rs.1,21,88,919/- was shown as ‘Sales/Gross Receipts from Services provided’ in the ITR, the amount of ‘Total amount paid/credited under Sections 194C, 194H, 194I and 194J of the Income Tax Act,1961 was shown as Rs.1,21,880.85/- and the amount of ‘Gross Value of Services Provided’ was reflected as Rs.1,12,20,244/-. In order to explain the discrepancies in these figures letters/emails were issued to the appellant calling for documents like ‘Balane Sheet, Profit and Loss Account, Income Tax Returns, Form:26AS, Service Income, Service tax ledger and ST-3 returns for the period F.Y. 2014-15. The appellants did not submit any reply.

3. It was observed that the nature of service provided by the appellant were covered under the definition of ‘Service’ as per Section 65 B(44) of the Finance Act, 1994 (FA,1994), and their services were not covered under the ‘Negative List’ as per Section 66 D of the FA,1994. Further, their services were not found to be exempted vide the Mega Exemption Notification No.25/2012-S.T dated



20.06.2012 (as amended). Hence, the services provided by the appellant during the relevant period were considered taxable.

4. The Service Tax liability of the appellant for the F.Y.2014-15 was calculated on the basis of difference between 'Value of Services declared in ITR' and 'Value of Services Provided as per ST-3 Returns' as per details given in table below :

Financial Year (F.Y.)	Value of Services declared in ITR. (in Rs.)	Value of Total amount paid credited under 194C, 194H, 194I & 194J (in Rs.)	Value of Services Provided – as per ST-3 Returns (in Rs.)	Highest Difference (Taxable Value) (Col.2 – Col.4)	Total Service Tax (in Rs.)
1	2	3	4	5	6
2014-15	1,21,88,919/-	1,21,880.85/-	1,12,20,244/-	9,68,675/-	1,19,728/-

4.1 The appellant was issued a Show Cause Notice under F.No. IV/16-15/TPI/PI/Batch-3C/2018-19/Gr-IV dated 25.06.2020 (in short SCN) wherein it was proposed to demand and recover service tax amounting to Rs.1,19,728/- under the proviso to Section 73 (1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994. It was also proposed to impose penalties under Section 77 and 78 of the Finance Act, 1994;

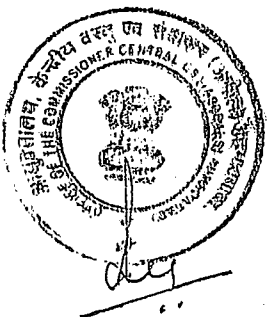
5. The SCN was adjudicated vide the impugned order wherein

- ▣ the demand for Rs. 1,19,728/- was confirmed under Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75;
- ▣ Penalty of Rs.10,000/- was imposed under Section 77 of the Finance Act, 1994;
- ▣ Penalty amounting to Rs. 1,19,728 /- was imposed under Section 78 of the Finance Act, 1994

6. Being aggrieved with the impugned order, the appellant have filed this appeal on following grounds:

- The demand is raised entirely on the basis of data received from Income Tax department and therefore is not proper as, Service Tax and Income Tax function under different statutes and the tax calculations of both the statutes cannot be reconciled. Difference arises due to cum-tax disclosure of service income in the Profit and Loss Account and not due to any income escaping taxability. In support they relied the following decisions :

- CCE Vs Mayfair Resorts [(2011) 22 STR 263]



- Synergy Audio Visual Workshop P.Ltd Vs Commissioner of S.T., Bangalore [2008 (10) STR 578]
 - Kush Construction Vs CGST NACIN, ZTI, Kanpur [2019 (24) GSTL 606 (Tri.All)]
 - Quest Engineers & Consultant Pvt.Ltd Vs Commisioner, CGST & C.Ex., Allahabad [2022 (58) GSTL 345 (Tr.All)]
 - Hindalco Industries Ltd Vs CCEx., Allahabad [2003 (161) EL 346 (Tri.Del.)]
- The demand was raised by the SCN without classifying the Services rendered by the appellant and service tax liability cannot be fastened on an unidentified service.
 - The fact that the appellants are registered under Service Tax for Supply of Manpower Service and have claimed exemption under Reverse Charge Mechanism was not considered by the adjudicating authority and the demand was confirmed on presumptions and assumptions.
 - The demand is required to be re-quantified allowing cum-tax benefit under Section 67(2) of the Finance Act,1994.
 - The appellants have filed their first Half yearly ST-3 Returns for the F.Y. 2014-15 on 22.10.2014. Hence, the stipulated period of 05 Years from that date ends on 22.10.2019, whereas the SCN for the same was issued on 25.06.2020, therefore the demand for the said period is hit by limitations. The Taxable Value for the said period amounts to Rs.4,78,759/- and the leviabale Service Tax comes to Rs.59,175/- which is liable to be dropped on said grounds.
 - The demand has been confirmed invoking the extended period of limitation. However the adjudicating authority has not discussed the reasons for invoking extended period and therefore failed to prove the malafide intent of the appellant.
 - The impugned order has not discussed the submissions of the appellant and therefore is a non-speaking order.



➤ Without establishing mens rea penalty cannot be imposed under Section 78 of the FA,1994.

➤ They further relied on the following citations in support of their contentions

- Oudh Sugar Mills Limited Vs UOI [1978 (2) ELT 172 (SC)]
- Shubham Electricals Vs CCE [2015 (40) STR 1034 (Tri.Del)]
- Uniworth Textiles Ltd. Vs CCE, Raipur [2013 (288) ELT 161 (SC)]
- Pahwa Chemicals Pvt.Ltd Vs CCE, Delhi [2005 (189) ELT 257 (SC)]
- Ranbaxy Laboratories Ltd. Vs CCE & ST, Chandigarh [2015 (329) ELT 867 (Tri.Del)]
- Tamilnadu Housing Board Vs CCE [1994 (74) ELT 9 (SC)]
- Lakshmi Engg.Works Vs Collectro of C.Ex [1989 (44) ELT 353 (Tri.)]
- Pushpam Pharmaceuticals Co.Vs CCE, [1995 (78) ELT 401 (SC)]
- Continental Foundation Jt.Venture Vs CCE, Chandigarh-I [2007 (216) ELT 177 (SC)]
- Satish Kumar & Co. Vs CCE, Nagpur [2019 (22) GSTL 269 (Tri.Mumbai)]
- CCE, Aurangabad Vs Bajaj Auto Ltd. [2010(260) ELT 17 (SC)]
- Amrish Rameshchandra Shah Vs UOI & Ors.[Writ Petition (L) No. 2103 of 2021]

➤ They submitted copies of copies of sample Invoices, tabulated sheet containing direct income data, copies of ST-3 Returns, copies of Income tax Returns, copy of Tax Audit Report for F.Y. 2014-15; copy of Form 26 AS, certificate for payment of service tax under RCM by service receiver and reconciliation statement alongwith their appeal memorandum.

7. Personal Hearing in the case was held on 10.02.2023. Ms Pooja M.Shah Chartered Accountant, appeared on behalf of the appellant for the hearing. She reiterated the submissions made in the appeal memorandum.

7.1 She has vide letter dated 13.02.2023 submitted a reconciliation statement between ITR/26AS and ST-3 Returns.



8. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during hearing and the materials available on records. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of Service Tax amounting to Rs.1,19,728/- alongwith interest and penalties, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2014-15.

9. It is observed that the SCN in the case has been issued only on the basis of data received from the Income Tax department. As per the SCN issued, the appellant is registered with the service tax department under 'Manpower Supply Services'. However, no further verification has been caused so as to ascertain the nature of services provided by the appellant during the relevant period and whether any exemptions/abatement were claimed by them. Hence, the SCN was issued in clear violation of the CBIC Instructions dated 20.10.2021, relevant portion of the Instructions is reiterated as :

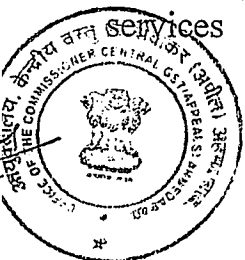
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3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee

...

Considering the facts of the case and the specific Instructions of the CBIC, I find that the SCN was issued indiscriminately and mechanically without application of mind, and is vague.

10. It is also observed that the appellants have in their ST-3 returns classified their services under 'Manpower recruitment/Supply agency service'. They have also claimed exemption/abatement vide 'Reverse Charge Mechanism' under Sr.No.8 of Notification No.30/2012-ST dated 20.06.2012 (as amended). Admittedly, the appellant have filed their ST-3 Returns during F.Y. 2014-15 and have paid service tax on a net taxable value amounting to Rs.28,05,061/- after availing abatement on the Gross Taxable Value of Rs.1,12,20,244/-. However, the adjudicating authority has, without proper explanation/reasoning, decided that the services provided by the appellant cannot be classified under 'Manpower



recruitment/Supply agency service' and, therefore, exemption/abatement claimed under 'Reverse Charge Mechanism' was denied. The authority has further denied the issue of deduction of TDS by some service recipients and also denied the certificates issued by them in respect of the fact of deduction of TDS. These acts on part of the adjudicating authority have rendered the impugned order a non-speaking order passed indiscriminately without considering the submissions of the appellant and is legally un-sustainable.

10.1 In terms of erstwhile Section 65 (105) (k) of the Finance Act, 1994, 'any service provided or to be provided to any person, by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner, is a taxable service'. Effective from 01.07.2012, 'Manpower recruitment/Supply agency service' is taxable as 'Service' without reference to the specific head of service. Further, Rule 2 (1) (g) of the Service Tax Rules, 1994 defines "supply of manpower" to mean supply of manpower, temporarily or otherwise to another person to work under his superintendence and control. The ST-3 Returns submitted by the appellant clearly specify that they are 'Proprietorship Firm'. Further, in terms of Notification No.30/2012-ST dated 20.06.2012, as amended, the reverse charge mechanism for 'Manpower recruitment/Supply agency service' is applicable "in case of services provided or agreed to be provided by way of supply of manpower for any purpose by any individual, HUF or proprietary firm or partnership firm, including AOPs located in the taxable territory to a business entity registered as a body corporate located in the taxable territory."

10.2 Co-relating the above provisions of law with the facts and circumstances of the case and considering the Invoices and Form-26AS submitted by the appellant, I find that the appellant are a proprietorship firm and have provided services/supplied manpower to firms which are 'Body Corporates'. Therefore, they are eligible for the benefit of 'Reverse Charge Mechanism' in terms of Sr.No.8 of Notification No. 30/2012-ST dated 20.06.2012, as amended. The sample copies of Invoices also confirm that the appellants have paid Service Tax @ 3.09% i.e @ 25% (of total service tax @ 12.36%) in terms of Sr. No.8 of Notification No. 30/2012-ST dated 20.06.2012, as amended. The SCN has also not challenged the payment of service tax by the appellant under Notification No. 30/2012-ST, dated 20.06.2012. Further, from the Form 26AS and the certificates of the Service



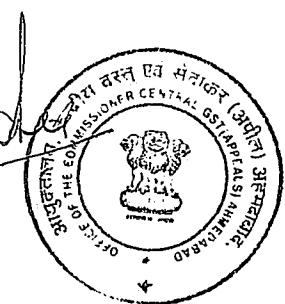
receivers, it is also observed that the appellant have provided services to 'Body Corporate' like M/s Pino Bisazza Glass Pvt. Ltd.; M/s Formica Laminates Pvt.Ltd; M/s Gemstone Glass Pvt. Ltd and M/s Sachin Industries Ltd.-Unit-2. These service receivers have deducted TDS on the amount inclusive of taxes. In other words, these service receivers have discharged the Service Tax liabilities on behalf of the appellants and deducted the said amount of Service Tax from the payments made to the appellants. Therefore, the appellants claim that the mismatch in turnover was due to deductions by the service receivers stands justified by the Form 26AS backed by certificates issued by the two major service receivers. It is also found that these justifications were presented before the adjudicating authority, who had failed to consider them and confirmed the demand mechanically in violation of principles of natural justice. In view of the above, the impugned order is legally unsustainable and is liable to be set aside.

11. The demand was confirmed invoking extended period of limitation. The appellants were registered with the department and they had filed their ST-3 returns regularly during the relevant period as well as discharged their service tax liabilities in time. Further, it is also observed that the ST-3 returns were filed prior to their due dates. Allegations made in the SCN or the findings of the impugned order have failed to discuss and confirm the act of suppression of facts or fraud or intent to evade duty on part of the appellant. I find it relevant to refer to the decision of the *Hon'ble CESTAT, WZB, Ahmedabad in the case of Chiripal Polyfilms Ltd., Vs Commissioner of Cen.Ex. & ST, Vadodara-I reported as 2022 (67) G.S.T.L. 454 (Tri. - Ahmd.)*, wherein the Tribunal has ruled that :

...

5.4 ...There is nothing on-record to show that any suppression of facts or wilful misstatement were made on the part of the appellant who has filed periodical ST-3 return regularly and disclosed all necessary details as required. In these circumstances charge of suppression or willful misstatement with Intention to evade Service Tax cannot be alleged against Appellant. For this reason no mala fide can be attributed to appellant. Hence longer period of demand cannot be invoked. No mala fide can be alleged for such issue of Interpretation and hence extended period of time limitation is not invocable in the facts of this case. No willful misstatements or suppression of facts with intention to evade Service Tax is brought on record by the Revenue, extended period of time limitation is not invocable, in the facts of this case.

...



11.1 I also refer to the ruling of the Hon'ble Kolkata High Court in the case of Commissioner, GST & CX, Kolkata North Commissionerate Vs Coal India Limited reported as 2023 (68) G.S.T.L. 128 (Cal.) that :

...
 10. ... we fully agree with the view taken by the Learned Tribunal that there is no specific allegation made against the respondent that they had willfully avoided payment of tax by suppressing the material facts with an intent to evade payment of tax. In the absence of such allegation, merely using the expression 'suppression' cannot be a ground for invoking the extended period..
 ...

11.2 In view of the discussions made above and the judicial pronouncements of the Tribunal above, I am of the considered view that the demand of Service Tax amounting to Rs. 1,19,728/- confirmed under Section 73(1) of the Finance Act, 1994 vide the impugned order invoking the extended period of limitation is legally unsustainable, both on merits as well as on limitation, and therefore is liable to be set aside. As the demand fails to sustain, there is no question of interest and penalty.

12. Accordingly, the impugned order is set aside and the appeal filed by the appellant is allowed.

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

Akhilesh Kumar
 6/3/2022
 (AKHILESH KUMAR)
 Commissioner (Appeals)
 Date: 06th March, 2022

Attested

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



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To,

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Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Commissionerate - Gandhinagar.
3. The Assistant Commissioner, Central GST Division – Kadi,
Commissionerate : Gandhinagar.
4. The Assistant Commissioner (System), CGST, Appeals, Ahmedabad. (for
uploading the OIA)
- ✓ 5. Guard File.
6. P.A. File.

