



सत्यमेव जयते

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

By SPEED POST

DIN:- 20230364SW000000D4DE

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/2417/2022-APPEAL / 1632-36
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-144/2022-23 and 10.03.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	20.03.2023
(ङ)	Arising out of Order-In-Original No. 15/AC/DEM/MEH/ST/Yash Corporation/2022-23 dated 19.05.2022 passed by the Assistant Commissioner, CGST, Division-Mehsana, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Yash Corporation, B-2, Balkrishna Shopping Centre, ST Workshop Road, Mehsana Industrial Estate, Mehsana, Gujarat-384002

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 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 रूपये या उससे कम होतो रूपये 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 2nd 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."

अपीलियआदेश / ORDER-IN-APPEAL

This order arises out of an appeal filed by M/s.Yash Corporation, 2/B, Balkrishna Shopping Centre, Opp. S.T. Workshop, Mehsana-384002 (hereinafter referred to as the “appellant”) against the Order-in-Original No.15/AC/DEM/Meh/ST/Yash Corporation/2022-23 dated 19/05/2022 (hereinafter referred to as the “impugned order”) passed by the Assistant Commissioner, CGST, Mehsana Division, Gandhinagar Commissionerate, (hereinafter referred to as the “adjudicating authority”).

2. The facts of the case, in brief, are that the appellant is engaged in providing services of installation of electrical/light equipments like high mast lighting pole, D.G.Sets, laying cables etc. against work orders received from their various clients and are holding Service Tax Registration No.AGWPP5734AST001 under the category of “Maintenance or Repair Service”. However, the Department considered that the activities carried out by the appellant actually merits classification under the category of “Works Contract Service” as per erstwhile Section 65 (105) (zzzza) of the Finance Act, 1994 and are taxable in terms of Section 66B of the Finance Act, 1994 (FA,1994). Accordingly, two Show Cause Notices (in short “SCN”) were issued to the appellant for non payment of Service Tax on ‘Works Contract Service’ as detailed below :

Sr.No.	SCN File No. & Date	Issued by	Period covered vide SCN	Amount of Service Tax demanded (in Rs.)
1	V.ST/15-81/OFF/OA/2012; dated 19.10.2012	Commissioner, Central Excise, Ahmedabad-III	F.Y.2007-08 to F.Y.2011-12	56,20,552/-
2	V.ST/11A-34/Yash/17-18; dated 28.03.2018	Asstt.Commissioner, CGST Div.Mehsana, Gandhinagar	F.Y.2012-13 to F.Y.2016-17	32,05,501/-

2.1 In order to quantify the demand for the subsequent period F.Y. 2017-18 (upto Jun-2017), letters were issued to the appellant calling for the details of value of Sales and Service Tax payable/paid during the said period. The appellant vide their letter dated 20.11.2020 provided copies of Balance Sheet, Profit and Loss Account, ST-3 Return, Income received from clients, Income Tax Returns and Form 26AS and EA-2000 Audit Report. As the appellants did not provide copies of any contracts/work order, the amount shown in books of accounts/profit and loss

account was considered as taxable value for calculation of their service tax liability for the relevant period and the same was calculated as per table below :

Details	Amount (in Rs.)
Taxable income as per books of accounts	38,41,422/-
Service Tax liability (@ 15%)	5,76,213/-
Service Tax paid as per ST-3 Returns	4,48,456/-
Differential Service Tax to be paid	1,27,757/-

3. On the basis of information provided by the appellant and calculations as above, a Show Cause Notice under F.No V.ST/11A-02/Yash/2021-22 dated 26.04.2021 was issued under Section 73(1A) of the Finance Act, 1994 (as amended) by the Assistant Commissioner of CGST, Mehsana Division, Gandhinagar Commissionerate, Ahmedabad wherein it was proposed to demand and recover Service Tax amounting to Rs. 1,27,757/- under proviso to sub-section (1) of Section 73 of the Finance Act, 1994 (FA,1994) alongwith interest under Section 75 of F.A, 1994. Further, penalties were proposed under Section 77(2) and Section 78 of the F.A.1994.

4. The SCN was adjudicated vide the impugned order wherein :

- the demand of Service Tax amounting to Rs. 1,27,757/- (including Cess) for the F.Y. 2017-18 (upto June-2017) was confirmed under Section 73(2) alongwith interest under Section 75 of the Finance Act, 1994;
- penalty of Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994; and penalty of Rs.1,27,757/- was imposed under Section 78 (1) of the Finance Act, 1994 with an option of reduced penalty under proviso to clause (ii) .

5. Being aggrieved with the impugned order, the appellant have preferred the present appeal on following grounds :

- (i) Out of the total turnover for the period April-June, 2017 amounting to Rs. 38,41,422/-, services of electric works contract amounting to Rs.10,59,023/- was provided to M/s ONGC Mehsana and Electrical Work services amounting to Rs. 24,850/- was provided to BHEL- ONGC, Mehsana. Their firm is a partnership firm, their services merit classification under 'service portion in execution of works contract service by any individual' and the service receivers are Body Corporates. Therefore, both these amounts are eligible for service tax under 50% RCM basis in terms of Sr.No.9 of Notification No. 30/2012-ST dated 20.06.2012 as amended. An amount of

Rs.7,73,031/- was also required to be deducted as per Rule 2A (i) (c) of the Service Tax (Determination of Value) Rules, 2006 being the value of materials on which VAT was paid.

- (ii) They have considered the turnover as per figures reflected in their Balance Sheet and they have also submitted a reconciliation sheet wherein the deductions discussed above are reflected. The amounts are also verifiable from their ST-3 Returns for the period. However, these aspects were not considered by the adjudicating authority in passing the impugned order. Vide the reconciliation statement, they have submitted that during the relevant period their Gross Income as per Balance Sheet was Rs. 38,41,422/- out of which an amount of Rs. 1,47,072/- was required to be deducted as exempt under 50% RCM basis and an amount of Rs.7,89,730/- merits deduction being the abatement admissible in terms of Rule 2A(i)(c) of the Service Tax (Determination of Value) Rules, 2006. Therefore, the Net Taxable Value comes to Rs. 29,04,620/- against which they have paid Service Tax on the taxable value of Rs. 29,89,698/- as per their ST-3 Returns. Therefore no Service Tax becomes liable for recovery from them.
- (iii) Further, they contended the invocation of extended period in the SCN and the impugned order on grounds that EA-2000 Audit of the appellant was conducted by the department for the relevant period and objections raised vide the SCN were not covered by the objections raised by audit and the appellants have filed their ST-3 Returns regularly. They also contended that the adjudicating authority has failed to discuss the ingredients to establish the willful suppression on the part of the appellants.
- (iv) In support of their all their contentions they relied the following citations :
- Hon'ble CESTAT, Bangalore in the case of Microfinish Valves Pvt.Ltd – 2019 (2) TMI 877 ;
 - Hon'ble CESTAT, New Delhi in the case of M/s Gannon Dunkerley & Co. Ltd– (2020 (12) TMI 1096);
 - Hon'ble CESTAT, New Delhi in case of M/s Rajcomp Info Services Limited reported as - 2022 (4) TMI 563 – Cestat, New Delhi;
 - Hon'ble CESTAT, Ahmedabad in case of Patel Labour Contractor P.Ltd – 2021 (4) TMI 811;

- Hon'ble CESTAT, Chennai in the case of Vodafone Cellular Limited reported as 2021 (10) TMI 186.
- Hon'ble Gujarat High Court in the case of Mahadev Trading Co. Vs Union of India – 2020-TIOL-1683-HC-AHM-GST.
- Hon'ble Allahabad High Court Sahibabad Printers Vs Additional Commissioner CGST (Appeals) reported as 2020-TIOL-2164-HC-ALL-GST.
- Hon'ble Delhi High Court in case of Principal Commissioner Vs Shubham Electricals, reported as 2016 (42) STR J 312 (Del).
- Hon'ble Supreme Court in the case of Commissioner of C.Ex reported as 2007 (213) ELT 487 (SC)
- Hon'ble Supreme Court in the case of Commissioner Vs Interchrome Pvt.Ltd. [2004 (164) ELT A128 (SC)].
- Hon'ble Supreme Court in the case of Continental Foundation Jt. Venture Vs CCE, Chandigarh-I, 2007 (216) ELT 177 (SC).
- Hon'ble CESTAT Bangalore in case of M/s Rolex Logistics Pvt.Ltd – 2009-2013-STR-147-(Tri.Bang.).
- Hon'ble CESTAT New Delhi in the case of M/s Oriental Insurance Company Limited – 2021 (5) TMI 869.
- Hon'ble CESTAT Bangalore in the case of YCH Logistics (India) Pvt.Ltd Vs CCE & CST, Bangalore Service Tax-I – [2020 (3) TMI 809]
- Hon'ble CESTAT, Chandigarh in the case of M/s Satish Kumar Contractor Ltd. Vs CCE, Panchkula [2018 (3) TMI 1429].

6. Personal Hearing in the case was held on 09.01.2023. Shri Bishan R. Shah, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in Appeal Memorandum.

7. I have carefully gone through the facts of the case and submissions made by the appellant in the Appeal Memorandum as well as at the time of personal hearing. I find that the issue to be decided in the instant appeal is whether the demand of Service Tax amounting to Rs.1,27,757/- confirmed vide the impugned order alongwith interest and penalty in the facts and circumstances of the case is legal and proper or otherwise. The demand pertains to the period F.Y.2017-18 (April-June, 2017).

8. It is observed that the appellants are a Proprietorship firm registered with the Service Tax department and providing services by classifying them under 'Maintenance or Repair Service and Works Contract Service. However, department had considered their services under 'Works Contract Service' and two demands were issued to them for the period F.Y. 2007-08 to F.Y. 2011-12 and F.Y.2012-13 to F.Y. 2016-17 as detailed in SCN. For the period F.Y. 2017-18 (upto June, 2017), the SCN was issued after obtaining copies of Balance Sheet, Profit and Loss Account, ST-3 Return, Income received from clients, Income tax returns, Form 26AS and EA-2000 Audit Report from the appellant. The amount shown in their books of accounts was considered as the taxable value for calculating the service tax liability and the SCN was issued under Section 73(1A) of the Finance Act, 1994. Further, the demand was confirmed vide the impugned order under Section 73(2) of the Finance Act,1994 invoking the extended period of limitation alongwith interest and penalties.

9. It is observed that the appellant have claimed exemption under Rule 2A(i)(c) of the Service Tax (Determination of Value) Rules, 2006 being the value of materials on which VAT was paid and also claimed benefit of 50%-RCM as per Sr. No. 9 of Notification No. 30/2012-ST dated 20.06.2012, as amended. They have submitted copies of work orders of Mehsana Municipality (letter dated 22.03.2016) and M/s ONGC, Electrical Section, Mehsana (letter dated 21.04.2015 for the period 2015-2018) evidencing the fact of maintenance works allotted to them by these firms, who are Body Corporates. The copy of VAT return for the period 01.04.2017 to 30.06.2017 confirm that they have paid total VAT amounting to Rs.78,530/- in respect of materials valued at Rs. 9,79,103/- procured by them for carrying out their services.

9.1 I find that the appellant had filed their ST-3 returns for the relevant period on 03.08.2017, wherein, they have classified their services under 'Works Contract Service' and claimed partial reverse charge @ 50% under proviso to Section 68(2) of the Finance Act,1994. They have further declared exemption under Sl.No.9 of Notification No. 30/2012-ST dated 20.06.2012, as amended, and abatement vide Sr.No.1 of Notification No. 24/22012-ST dated 06.06.2012 [Service Tax (Determination of Value) Rules, 2006]. They have declared a Gross Taxable Amount of Rs. 39,26,500/- out of which they have claimed partial reverse charge @ 50% on an amount of Rs. 10,83,873/- and exemption of Rs. 9,36,802/-. They

have paid service tax amounting to Rs. 4,33,507/- on net taxable value of Rs. 29,89,698/- under 'Works contract service'. Upon comparing the figures of the ST-3 returns with the contentions of the appellant as discussed supra, I find that both are identical, and; therefore, the appellants claim stands justified.

9.2 It is further observed that the ST-3 return was filed on 03.08.2017 and the SCN was issued to the appellant on 26.04.2021 demanding an amount of Rs.1,27,757/- under proviso to Section 73(1) of the Finance Act, 1994 after receiving the copies of Balance Sheet, Profit and Loss Account, ST-3 Return, Income received from clients, Income Tax returns, Form 26AS and EA-2000 Audit Report of the appellant. It is further observed that the SCN was issued primarily under section 73 (1A) of the Finance Act, 1994 w.r.t. two SCN's issued to the appellant. Thereafter, the provisions of extended period was invoked under proviso to Section 73 (1) of the Finance Act, 1994, which appears to be contradictory and legally unsustainable. Therefore, the SCN in the case was issued arbitrarily without considering the facts of the case and is liable to be set aside on this ground only.

9.3 From the documents submitted by the appellant, it is further observed that EA-2000 Audit of the service tax records of the appellant was conducted for the period April, 2013 to June, 2017 and Final Audit Report No. 1212/2018-19 (FAR) was issued on 26.02.2019. The observations drawn by the Audit in the FAR was nowhere related to the allegations made in the SCN. It is also recorded in the impugned order that all the documents i.e ST-3 Returns, Balance Sheet, Profit and Loss Account, Income statement, Income Tax returns, Reconciliation statement, Form 26AS and EA-2000 Final Audit Report were available with the adjudicating authority before passing the order. However, the adjudicating authority has failed to appreciate the facts of the case and confirmed the demand raised vide the SCN invoking the extended period of limitation. I find that the impugned order has been issued arbitrarily and accordingly, is legally unsustainable.

10. The appellant have also contended that extended period of limitation cannot be invoked in case of SCN issued under Section 73 (1A) of the Finance Act, 1994 (as amended). Section 73(1A) of the F.A., 1994 reads as under :

(1A) Notwithstanding anything contained in sub-section (1) except the period of thirty months of serving the notice for recovery of service tax), the Central Excise Officer may serve, subsequent to any notice or notices served under that sub-section, a statement, containing the details of service tax not levied or paid or short levied or short paid or erroneously refunded for the subsequent period, on

the person chargeable to service tax, then; service of such statement shall be deemed to be service of notice on such person, subject to the condition that the grounds relied upon for the subsequent period are same as are mentioned in the earlier notices.

Plain reading of the above clearly brings out the fact that the statements/notices issued under this sub-section do not cover the extended period of 05 years (as applicable). In view of the above, it appears that in respect of show cause notices issued under Section 73 (1A) of the Finance Act, 1994 (as amended) extended period of limitation can not be invoked.

10.1 In light of the above, I find that, in the instant case, the fact of filing ST-3 returns by the appellant being undisputed and the SCN being issued under Section 73 (1A) of the Finance Act, 1994 (as amended), the demand raised vide the SCN in question invoking extended period of limitation is arbitrary. Therefore, in light of the above discussions, I am of the considered view that, the demand of Service Tax amounting to Rs. 1,27,757/- confirmed vide the impugned order by way of invocation of extended period of limitation is legally unsustainable and liable to be set aside.

11. My views are supported by the following judicial pronouncements :

- *The CESTAT Ahmedabad in the case of Patel Labour Contractor P Ltd Vs C.S.T.-Service Tax – Ahmedabad in Service Tax Appeal No. 10098 of 2013 on 19.04.2021 reported ruled that :*

...
 4.2 *As per the facts in the present case the period of dispute i.e. 2005-06 to 2009-10 and show cause notice was issued on 19.05.2011. It is also observed that the appellant has filed their ST-3 return covering the period October 2009 to March 2009 on 27.04.2010. As per the aforesaid facts the entire demand is beyond the normal period and falling under the extended period of limitation. As per the above discussion and findings which is supported by the various judgments on limitation. The entire demand is time barred.*

- *The CESTAT Chennai in the case of Vodafone Cellular Limited Vs The Commissioner of GST & Central Excise, Coimbatore in Service Tax Appeal No. 42404 of 2013 on : 01.10.2021 decided that :*

...
 12. *Coming to the issue of limitation, we find that in addition to the fact that the appellants are regular assesseees who have been filing ST-3 Returns, the appellants have been issued show cause notices dated 22.09.2009 and 08.10.2010. This being the case, it is not possible to invoke extended period by alleging suppression of fact with an intent to evade payment of duty in respect of show cause notices dated 14.10.2010 and 13.10.2011 ...*

13. *In view of the above, it is not possible for this Bench to hold that the department is free to invoke extended period in the subsequent show cause notices. ...*

- *The Hon'ble Supreme Court in the case of ECE Industries Limited Vs Commissioner of central Excise, New Delhi, reported 2004 (164) E.L.T. 236 (S.C.) ruled that :*

...

4. In the case of M/s. P & B Pharmaceuticals (P) Ltd. v. Collector of Central Excise reported in [2003 (2) SCALE 390], the question was whether the extended period of limitation could be invoked where the Department has earlier issued show cause notices in respect of the same subject-matter. It has been held that in such circumstances, it could not be said that there was any wilful suppression or mis-statement and that therefore, the extended period under Section 11A could not be invoked.

5. In our view, the principles laid down in above case fully apply here. As earlier proceedings in respect of same subject matter were pending adjudication it could not be said that there was any suppression and the extended period under Section 11A was not available

...

- *The Hon'ble Supreme Court in the case of Nizam Sugar Factory Vs Collector of Central Excise, AP reported 2006 (197) E.L.T. 465 (S.C.) ruled that :*

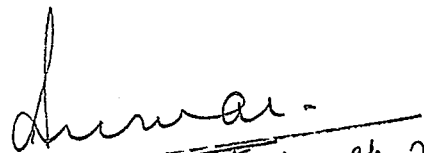
...

9. Allegation of suppression of facts against the appellant cannot be sustained. When the first SCN was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second and third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the authorities. We agree with the view taken in the aforesaid judgments and respectfully following the same, hold that there was no suppression of facts on the part of the assessee/appellant


...

12. In view of the discussions made hereinabove, the demand of Service Tax amounting to Rs.1,27,757/- confirmed vide the impugned order invoking extended period of limitation is legally unsustainable both on merits as well as on limitation and is hereby set aside. As the demand fails to sustain, the question of interest and penalty does not arise. 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.


.. 10th March, 2023..
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 10th March, 2023

Attested:


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

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