



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
GST Bhavan, Ambawadi, Ahmedabad-380015
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in
Website : www.cgstappealahmedabad.gov.in



आज़ादी का
अमृत महोत्सव

By Regd. Post

DIN No.: 20230364SW000042474D

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STD/201/2022-APPEAL / 9905-9909
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-149/2022-23 and 24.03.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	27.03.2023
(ङ)	Arising out of Order-In-Original No. AHM-CEX-003-REASSIGNED-AC-NLC-042-21-22 dated 14.06.2022 passed by the Assistant Commissioner (Sevottam), CGST & C.Ex., 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 Shri Sai Electrical (PAN-ACRFS4803Q), Shop No.3, Saundarya Silver Complex, Radhanpur Road, 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 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।

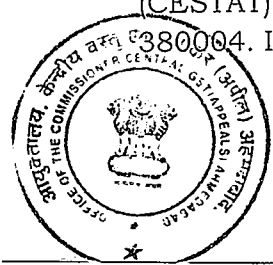
The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

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 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।

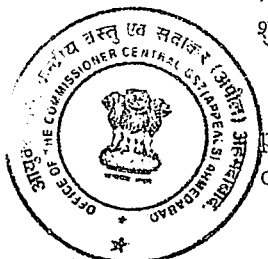
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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."



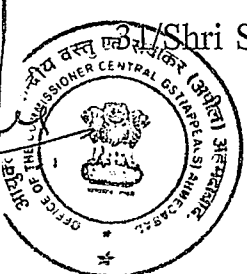
अपीलिय आदेश / ORDER-IN-APPEAL

The Assistant Commissioner, CGST, Mehsana Division, Commissionerate - Gandhinagar (hereinafter referred to as the 'Appellant Department'), in pursuance of the Review Order No. 06/2022-23 dated 26.08.2022 issued under Section 84 of the Finance Act, 1994 by the Commissioner, CGST & Central Excise, Gandhinagar, has filed the present appeal against the Order-in-Original No.AHM-CEX-003-REASSIGNED-AC-NLC-042-21-22 dated 14.06.2022 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, CGST and Central Excise (Sevottam), Commissionerate - Gandhinagar (hereinafter referred to as the "adjudicating authority") in the matter of M/s. Shri Sai Electrical, Shop No. 3, Saundarya Silver Complex, Radhanpur Road, Mehsana - 384002 (hereinafter referred to as the "respondent").

2. Facts of the case, in brief, are that the respondent were holding Service Tax Registration No. ACRFS4803QSD001 for providing taxable services. As per the information received through Preventive Section, HQ, Gandhinagar vide D.G. Systems Report No. 02 & 03, discrepancies were observed in total income declared by the respondents in their Income Tax Return vis-à-vis Service Tax Returns for the period F.Y. 2015-16 and F.Y. 2016-17. 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 appeared to be 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	00	14.5%	00
2	F.Y. 2016-17	80,59,375/-	15%	12,08,906/-
	Total	80,59,375/-		12,08,906/-

2.1 A Show Cause Notice was issued to the respondent under F.No. V.ST/11A-31/Shri Sai/2020-21 dated 29.06.2020 (in short SCN) vide which it was proposed



to demand and recover Service Tax amounting to Rs.12,08,906/- under proviso to Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75 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 :

- Demand of Rs. 1,14,061/- (Rs. 91,064/- + Rs. 22,997/-) was confirmed under section 73(2) of the Finance Act, 1994 alongwith Interest under section 75 of the Finance Act, 1994.
- Penalty of Rs. 1,14,061/- was imposed under Section 78 of the Finance Act, 1994 with option for reduced penalty under proviso to clause (ii).

3. Being aggrieved with the impugned order passed by the adjudicating authority as regards not confirming the demand of Rs. 10,94,845/- , the Appellant Department have preferred this appeal on the grounds as mentioned in the subsequent paragraphs.

3.1 The adjudicating authority has vide the impugned order dropped the demand of Rs. 10,94,845/- out of the total demand of Rs. 12,08,906/- raised vide the SCN. The adjudicating authority has not gone through the agreements/contracts while deciding the case and merely accepted the contentions of the respondent and dropped the demand partially by extending the benefits of 'Reverse Charge Mechanism' and 'cum-duty valuation' in favour of the appellant without proper discussion and justification, which has rendered the impugned order a non-speaking order.

3.2 The respondents were engaged in providing Manpower Supply services, Works Contract Service, Rent a Cab service and Maintenance and Repairing service. Vide Paragraph No.26 benefit of 50% RCM was extended in terms of Notification No. 30/2012-ST dated 20.06.2012 for the services provided to M/s. Harshad Abakus Solar (P) Ltd. considering the service recipient as body corporate. No discussions were made about the Agreement/Contract entered into by the respondent or about the activities performed by them.



3.3 Similarly, vide Paragraph Nos. 29 and 30 of the impugned order, the adjudicating authority extended 100% RCM benefit vide Notification No. 30/2012-ST dated 20.06.2012 for the services rendered to M/s. Avi Solar Energy Pvt Ltd. and M/s. GE T&D India Ltd. without discussing about the Agreement/Contract entered into by the respondent or about the activities performed by them.

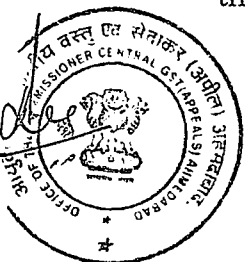
3.4 The adjudicating authority vide Paragraph No. 31 of the impugned order has, hypothetically granted cum-duty-benefit to the respondent. Without any proper discussion, it has been concluded that they are eligible for the said benefit. There is no mention of verification of any invoices or any other documentary evidence, to justify the conclusion.

3.5 Taxable value as per the demand notice on which the demand has been raised is Rs.80,59,375/-, whereas the amount reflected in the tables mentioned in the findings of the adjudicating authority is Rs.1,86,51,406/-. The adjudicating authority has not attempted to clarify this aspect or to reconcile the figures discussed in the findings vis-a-vis those in the demand notice.

3.6 The adjudicating authority has failed in following the fundamental responsibility entrusted upon him, which adversely affected the revenue as the tax demand of Rs.10,94,845/- was dropped without examination/verification/discussion of the case records. The adjudicating authority has grossly erred in extending the RCM benefit under Notification No.30/2012-ST, ibid and cum-duty benefit to the assessee, without verification of relevant documents, through a Non-Speaking Order which is not legal & proper and deserves to be set-aside.

4. A cross-objection to the appeal was filed by the respondents on 20.01.2023 wherein they submitted that:

- The respondent had entered into agreements with M/s Harshad Abakus Solar (P) Ltd; M/s Avi Solar Energy Pvt. Ltd and M/s GE T & D India Ltd vide which they had agreed to supply manpower to these companies for the works of loading, unloading, cutting sanding etc. Bills for the manpower supply were raised on monthly basis. Their activity was in confirmation with the provisions of Contract Labour (Regulation and Abolition) Act, 1970.



- The respondent agreed to decide the service conditions of the employees engaged by them, ensure their payment as per minimum wages regulations, maintain various records as required by the legislation and bear all burden of fine, penalty, rise in wages etc.
- As the respondents were engaged in manpower supply to their clients, they were eligible for the benefit of Reverse Charge Mechanism (RCM) in terms of Notification No. 30/2012-ST dated 20.06.2012 as amended vide Notification No. 07/2015-ST dated 01.03.2015. Further, the service receivers for Manpower Supply services rendered by the respondents were all Body Corporates and therefore with effect from (w.e.f) 01.04.2015, they were eligible for 100% RCM in terms of Sr. No. 8 of the notification. Hence, the adjudicating authority had correctly extended the benefit of RCM on the respondents vide the impugned order.
- Values reflected in their Form-26AS were inclusive of Service Tax and when such value was considered for computation of service tax liability, they were eligible for cum-tax benefit as granted by the adjudicating authority vide the impugned order.
- In case of the respondents being liable for service tax, the service recipients would be eligible for Cenvat credit and it would amount to Revenue neutral.
- Alongwith their written submission, they submitted copies of Form-26AS for the F.Y. 2016-17; ST-3 returns for the period F.Y. 2016-17; Profit & Loss Account; Balance Sheet; Income Tax Return for the A.Y. 2017-18; Voucher No.178 dated 26.09.2015; Voucher No.121 dated 20.09.2016 ; Voucher No.O&m/s/DOM/1718/46 dated 07.02.2018; Work order Ref: AVI/2016/208 dated 03.03.2016 of AVI Solar energy Pvt.Ltd.
- In support of their contentions they cited the following citations :
 - Decision of Hon'ble Supreme Court in the case of Adiraj Manpower Services Pvt.Ltd Vs CCE, Pune-II reported as 2022 (58) GSTL 137 (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.)



- o 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).
- o 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).

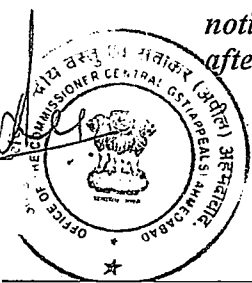
5. Personal Hearing in the case was held on 10.02.2023. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of the Respondent for hearing. He reiterated the submissions made in the cross-objection to the appeal.

6. I have carefully gone through the facts of the case, grounds of appeal, the written submissions made by the respondent and oral submissions made by them at the time of personal hearing. 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. 10,94,845/-, out of the total demand of Rs.12,08,906/-, by way of extending the benefit of 'Reverse Charge Mechanism' in respect of services rendered by the respondent, is legal and proper or otherwise. The demand pertains to the period F.Y. 2016-17.

7. I find that the demand has been raised in the SCN for the period F.Y. 2016-17 on the basis of data received from Income Tax department. The respondents are registered with the department and had filed their ST-3 Returns for the relevant period. It is further observed that the respondent filed their ST-3 Returns mentioning provision of services under cleaning service, Erection, Commissioning and Installation Service, Manpower recruitment/supply services and Works contract service. The SCN however did not classify the services of the respondent and the demand was raised only 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. 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. The relevant portion of the Instructions is reproduced below :

...

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.

8. It is further observed that the respondents have declared in their ST-3 Returns that they are 'Partnership Firm'. They were providing various services like 'Cleaning Service', 'Erection, Commissioning and installation Service', Manpower Recruitment/Supply Service' and 'Services in relation to execution of Works Contract service'. They have also submitted before the adjudicating authority that during the period F.Y. 2016-17, they have provided 'manpower supply Service', 'Works Contract Service', 'Rent a Cab Service' and 'Maintenance & Repairing Service' to various companies. While justifying the differential taxable amount of Rs. 80,59,375/- in the SCN, the respondents have submitted the details of nature and amount of service tax calculated in respect of various services in tabulated form. They also contended that during the period F.Y. 2016-17, they have paid Service Tax amounting to Rs. 15,92,304/- on the taxable value of Rs. 1,06,15,331/- and agreed to pay the remaining amount of service tax amounting to Rs. 91,064/- alongwith interest and penalty on the taxable value of Rs. 6,07,904/-. In respect of the value of Rs.1,86,51,406/- shown in their Form-26AS, they have explained that an amount of Rs. 74,28,981/- was considered as exempted/RCM and for the remaining amount of Rs.1,12,22,425/-, they are liable to pay Service Tax, out of which Rs. 91,064/- remained to be paid. These contentions were accepted by the adjudicating authority.

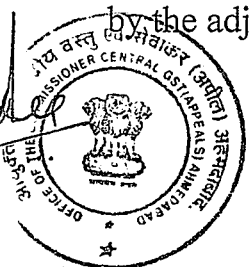
9. It is the contention of the appellant department that the adjudicating authority has merely accepted the contentions of the respondent and extended the benefit of 'Reverse Charge Mechanism' and 'cum-duty benefit' without discussing their eligibility and without verifying the agreement/contract, bills etc. before dropping the demand vide a cryptic and non-speaking order. In this regard I find that the adjudicating authority has at Paras 26, 27, 28, 29, 30 and 31 of the impugned order discussed the taxability of services provided by the respondent and stayed at the tax liability of the respondent.



9.1 As regards the contention of the appellant department regarding services provided to M/s Harsha Abakus Solar P.Ltd., it is observed that the respondent had provided works contract services amounting to Rs.7,48,608/- rendered to M/s Harsha Abacus Solar Pvt. Ltd. They have in terms of Sr. No. 9 of Notification No.30/2012-ST dated 20.06.2012, as amended, shown their liability of service tax on 50% of the value, the remaining 50% of the liability was to be discharged by the service recipient. I find that the respondents are a partnership firm and the service recipient is a 'Body Corporate'. Hence the services provided in service portion of execution of works contract services' are liable for 50% payment of service tax under RCM, as discussed by the adjudicating authority in Para-26 of the impugned order. It is the contention of the appellant department that the adjudicating authority has extended the benefit without discussing the agreement/contract entered into by the respondent and the nature of activities carried out by them. In this regard I find that the adjudicating authority has at Para 20 of the impugned order recorded that the respondents had submitted copy of VAT Returns, copy of Invoice, Ledger Account, ST-3 Returns, Purchase order copies and contract agreement of the parties. Hence, I find that the adjudicating authority has granted the benefit of 50% of taxable value under reverse charge mechanism under Notification No.30/2012-ST dated 20.06.2012 after examining the relevant documents. The appellant department has not come forward with any discrepancies in the documents considered by the adjudicating authority. The contention of the department in grounds of appeal are therefore vague and liable to be rejected.

9.2 The appellant department has further contended that the adjudicating authority has extended 100% RCM benefit in the case of services provided to M/s AVI Solar Energy Pvt. Ltd. It is observed that the respondent has declared in their ST-3 returns as well as they have filed documents before the adjudicating authority in support of their contention and the exemption in terms of Sl.No.8 of Notification Number 30/2012-ST dated 20.06.2012, as amended was extended. It is also observed that the document submitted by the respondent indicates that the work order of M/s AVI Solar Energy Pvt. Ltd. for the relevant period describes the same as 'Providing Men Power at SE-25-Charanka & SE20 Dhama, Gujarat' which clearly show that the services rendered were related to providing 'Man Power'. Hence, the classification of the services and extending the benefit of 100% RCM

by the adjudicating authority appears to be legally sustainable.



9.3 Further, regarding the exemption extended to the services provided by the respondent to 'M/s GE T&D' by classifying the services under 'Rent-a-Cab' service and extending 100% 'Reverse Charge Mechanism' benefits in terms of Sl. No. 7 (a) of Notification No. 30/2012-ST dated 20.06.2012, as amended, the relevant portion of the notification is reproduced below :

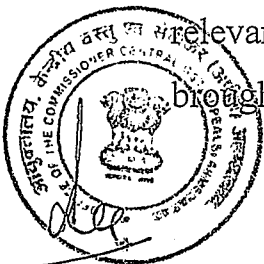
Government of India
Ministry of Finance
(Department of Revenue)
Notification No. 30/2012-Service Tax

New Delhi, the 20 th June, 2012

GSR(E).-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012- Service Tax, dated the 17 th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 213(E), dated the 17 th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31 st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849 (E), dated the 31 st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-

Sr. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
...			
7	(a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on abated value to any person who is not engaged in the similar line of business	Nil	100 %
	(b) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on non abated value to any person who is not engaged in the similar line of business	60%	40%
...			

Considering the status of the respondent firm as discussed in the foregoing paras and that the service recipient being a limited company, I find that the eligibility of the exemption in terms of Sl. No. 7 (a) of Notification No. 30/2012-ST dated 20.06.2012, as amended, extended to the respondents after due consideration of relevant documents in Para 30 is legally correct. The appellant department has not brought any discrepancies in the documents considered by the adjudicating

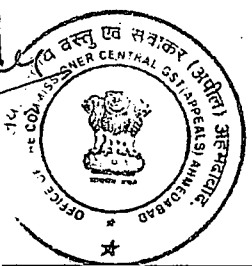


authority. Hence, the contentions of the appellant department in the appeal memorandum are vague and is liable for rejection.

9.4 It is observed from the Form-26AS for the F.Y. 2016-17 submitted by the respondent that various companies have credited amounts under Section 194C of the Income Tax Act, 1961, details of which as under :

Name of Company	Amount credited under Section 194C of the Income Tax Act,1961 (in Rs.)
Gujarat Energy Transmission Corporation Ltd. (GETCO), Kheralu	3,02,666
Gujarat Energy Transmission Corporation Ltd.	1,87,942
Gujarat Energy Transmission Corporation Ltd.	91,635
Gujarat Energy Transmission Corporation Ltd.	10,83,444
GPI Projects Pvt.Ltd.	87,92,255
Harsha Engineers International Ltd.	7,48,608
Space Application Centre (ISRO)	1,53,316
AVI Solar Energy Private Limited	54,07,776
Cleanmax Harsha Solar LLP	96,700
Alex Astral Power Private Limited	54,500
GE T&D India Limited	3,26,421
Electro Control Systems	1,56,000
Indian Oil Corporation Ltd. (IOCL)	9,69,790
Moserbaer Solar Limited	52,500
Photon Energy Systme Limited	2,27,853
Total	1,86,51,406

The department have also contended that the adjudicating authority has failed to discuss the difference in taxable value shown as per the SCN as Rs. 80,59,375/- while the appellant has claimed their Form 26AS figures to be Rs. 1,86,51,406/-. In this regard, I find that the taxable value of Rs. 80,59,375/- shown in the SCN was arrived at after deducting the taxable value amounting to Rs. 1,06,15,331/- reflected in their ST-3 Returns from the total amount of Rs. 1,86,51,406/- reflected in Form-26AS. These facts are undisputed and specific explanations have been given in the impugned order by the adjudicating authority. The contentions of the department are devoid of merit.



10. As regards the contention of the appellant department that the adjudicating authority has not discussed the issue of extending 'cum-duty benefit' to the respondents, I find that the grounds of appeal have pointed out only unsubstantiated shortcomings in the impugned order. Their contentions are not supported by any documents. I also find that the respondents had submitted various documents and statutory records before the adjudicating authority. They also submitted reconciliations sheets showing the details of amounts reflected in their Form - 26AS, ST-3 Returns, Balance Sheets, P& L Account etc. In their reconciliation sheet, they have shown that an amount of Rs. 11,67,164/- pertains to 'Value inclusive of Service Tax'. Without any mention of the said amount as disputed amount in the SCN, the conclusion drawn by the adjudicating authority vide the impugned order cannot be disputed. It is pertinent to mention that the SCN issued in the case was based on merely Income Tax data and demand raised in the SCN was vague.

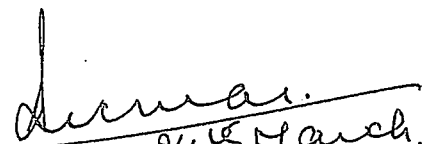
11. In view of the discussions made above, I find that there is no merit in the department appeal as regards extending the benefit of RCM to the respondents and dropping the demand in the impugned order. It is also observed that since the SCN is vague, the adjudicating authority cannot be expected to go beyond the scope of the SCN for deciding issues which are not disputed.

12. In view of the discussions made above, the appeal filed by the Appellant Department against the impugned order is dismissed being devoid of merits..

13. 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.

Attested

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


(Akhilesh Kumar)
Commissioner (Appeals)
Date: 24th March, 2023



By Regd. Post A. D

1. The Assistant Commissioner
CGST, Division- Mehsana,
Commissionerate - Gandhinagar Appellant
2. M/s. Shri Sai Electrical
Shop No.3, Saundarya Silver Complex,
Radhanpur Road, Mehsana - 384002 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

