सत्यमेव जयते

आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय,अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ीअहमदाबाद३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
. ☎ 07926305065 - टेलेफैक्स07926305136

DIN : **20220564SW00007757A5**

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STD/128/2021 /873 - 877

ख अपील आदेश संख्या Order-In-Appeal Nos.**AHM-EXCUS-003-APP-016/2022-23**
दिनाँक Date : **09-05-2022** जारी करने की तारीख Date of Issue 10.05.2022

आयुक्त (अपील) द्वारापारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **47/D/GNR/KP/2020-21** दिनाँक: **23.03.2021** issued by Assistant Commissioner, CGST& Central Excise, Division Gandhinagar, Gandhinagar Commissionerate

ध अपीलकर्ता का नाम एवं पताName & Address

1. **Appellant**

   The Assistant Commissioner
   CGST Division Gandhinagar
   Sector 10A, Nr. CH-3 Circle, Opp. St. Xavier's School,
   Gandhinagar – 382010

2. **Respondent**

   M/s DK Metro Procon Private Limited
   Flat No. 9, Shivalaya Apartments, Nr. Bank of Baroda,
   B/H Saffron, Panchwati, Ahmedabad - 380006

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

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

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India:

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

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी 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 मे हो माल की प्रकिया के दौरान हुई हो।

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

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

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

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

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

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

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

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए–8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनाँक 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.

(2) 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद–380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor,BahumaliBhawan,Asarwa,Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.

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. Registar 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 ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होत हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

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 not withstanding 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूचि–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 कान्यायालय 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 in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(41) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो 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)-

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

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

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

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

(cvi) amount determined under Section 11 D;
(cvii) amount of erroneous Cenvat Credit taken;
(cviii) amount payable under Rule 6 of the Cenvat Credit Rules.

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

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

ORDER-IN-APPEAL

The present appeal has been filed by the Assistant Commissioner, Central GST, Gandhinagar Division, Commissionerate- Gandhinagar (hereinafter referred to as the appellant), on the basis of Review Order No. 02/2021-22 dated 07.05.2021 passed by the Commissioner, Central GST & Central Excise, Gandhinagar Commissionerate in terms of Section 84 of the Finance Act, 1994 against Order in Original No. 47/D/GNR/KP/2020-21 dated 23.03.2021 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST & Central Excise, Commissionerate- Gandhinagar [hereinafter referred to as "*adjudicating authority*"] in the case of M/s. DK Metrocon Private Limited, Block No.1163, Opposite Amiras Hotel, Near GIDC, National Highway No.8, Ahmedabad – 382729 [hereinafter referred to as the respondent].

2. Briefly stated, the facts of the case is that analysis of Sales/Gross Receipts from Services (value from ITR), the total amount paid/credited under Sections 194C, 194H, 194I, 194J of the Income Tax Act and Gross value of services provided was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15 and the details of the same were shared with CBIC. On perusal of the said analysis, it was noticed that the respondent had shown less amount of the gross value of service provided in their ST-3 returns as compared to the sales/gross receipts from services, total amount paid/credited under Sections 194C, 194H, 194I, 194J filed with the Income Tax Department. It, therefore, appeared that the respondent had mis-declared/suppressed the gross value of services provided in their ST-3 returns filed for the F.Y. 2014-15 and consequently short paid service tax amounting to Rs.28,56,294/-.

2.1 The respondent was issued Show Cause Notice bearing No. IV/16-09/TPI/PI/Batch 3B/2018-19/Gr.III dated 25.06.2020 wherein it was proposed to recover the service tax amounting to Rs. 28,56,294/- under

the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. Imposition of penalty under Section 77 and Section 78 of the Finance Act, 1994 was also proposed. The said SCN was adjudicated vide the impugned order wherein the demand raised against the respondent was dropped.

3. Being aggrieved with the impugned order the appellant department has filed the instant appeal on the following grounds:

i) The adjudicating authority has not examined the factual position of the issued involved and has dropped the demand and penalty by merely relying upon the fact that the Departmental Audit was conducted for the period from October, 2012 to March, 2017 and Final Audit Report No. 1577/2016-17 (Service Tax) dated 01.08.2017 was issued, without discussing whether the Audit had raised the issue regarding the respondent showing less gross value in their ST-3 returns, the nature of the activity to which the differential amount pertains to and whether the same was taxable or exempted.

ii) The adjudicating authority has erred in passing the impugned order without assigning any valid reasons and without discussing whether the differential amount pertains to which activity/service and whether the same was taxable or exempted. Therefore, the impugned order is cryptic in nature and such a non-speaking order is not sustainable.

iii) Reliance is placed upon the decision in the case of Asstt. Commr., Commercial Tax Department Vs. Shukla & Brothers – 2011 (22) STR 105 (SC); Tata Engineering & Locomotive Co. Ltd. Vs. Collector of Central Excise, Pune – 2006 (203) ELT 360 (SC); Order dated 27.10.2020 of the Hon'ble Bombay High Court in the case of Supreme Industries Ltd. Vs. CBIC & Others in Writ Petition No. 92578 of 2020

4. The respondent filed their cross-objections on 03.05.2022, wherein it was, inter-alia, submitted that :

- The adjudicating authority after going into the validity and legality of the facts of the present case, categorically held that the departmental audit had already conducted audit of F.Y. 2014-15 wherein audit objections were raised but the present issue was not raised. Therefore, it was held there was no reason to proceed further in the matter.
- Reliance is placed upon the decision in the case of Commissioner of Central Excise, Bangalore Vs. Pragathi Concrete Products (P) Ltd. – 2015 (8) TMI 1053; Monarch Catalyst Pvt. Ltd. Vs. CCE – 2016 (41) STR 904 (T); CCE & ST, Surat Vs. Essar Bulk Terminal Ltd. – 2022 (1) TMI 317; CCE & ST, Ahmedabad Vs. Kalpataru Power Transmission Ltd. – 2021 (3) TMI 823.
- It is a trite law that once the audit was completed by the department and the issue was not raised at the time of audit, then the allegation of suppression for the said period is not maintainable.
- The impugned proceedings are without jurisdiction, unconstitutional and erroneous, as they completely fail to comply with the Constitutional scheme so applicable after enactment of the CGST Act, 2017.
- When a tax demand is raised by the department on the ground of short levy/non-levy of tax by an assessee, the burden of proof to establish such short levy/non-levy is on the department, which has not been discharged in the instant.
- Reliance is placed upon the decision in the case of UOI Vs. Garware Nylons Ltd. – (1996) 10 SCC 413; Commissioner of Customs, Mumbai Vs. Foto Centre Trading Co., - 2008 (225) ELT 193 (Bom); Commissioner of Central Excise, Chandigarh Vs. Khalsa Charan Singh and Sons – 2010 (255) ELT 379 (P&H); Rajendra Jagannath Parekh and Ajay Shashikant Parekh Vs. Commissioner of Customs – 2004 (175) ELT 238 (Tri.-Mum);

Commissioner Vs. Kuber Tobacco Products Ltd. – 2016 (339) ELT A130 (Del.); Commissioner of Central Excise, Coimbatore Vs. Vyas Textiles – 2015 (327) ELT 681 (Tri.-Chennai) and Commissioner of Customs, Amritsar Vs. Neeldhara Transfers – 2012 (284) ELT 673 (Tri.-Del).

- There is no short payment of service tax on their part as the value of taxable services shown in the ST-3 returns were duly calculated as per Section 67 of the Finance Act, 1994.
- They are engaged in construction services other than residential complex, including commercial /industrial buildings or civil structure. During F.Y. 2014-15 they have discharged service tax for whatever amount received in respect of services provided with respect of ongoing projects.
- They had received certain amount as advance from customer which is inclusive of service tax and disclosed the same in their ST-3 returns, which can be verified from their bank statement and ledger account. Abatement of 70% is available on construction of a complex, building, civil structure or part thereof intended for sale to a buyer, wholly or partly. Therefore, though the service tax rate was 12.36%, the effective rate was 3.708% which was discharged by them. Therefore, there is no short payment of service tax.
- The sale of service shown in income tax return and value of services shown in service tax returns I different due to the method of calculation as defined under law. Value for service tax has to be calculated as per amount received in respect of the service provided. However, under income tax it has to be calculated as per the percentage of completion method as specified in Accounting Standard-7 issued by the ICAI and as per Section 129 of the Companies Act, 1956.
- As per income tax act they had Nil sales for F.Y. 2011-12 to F.Y. 2013-14. However, they had paid service tax on the value of services amounting to Rs.1,40,25,997/- as per the ST-3 returns. This further clarifies that the calculation of value of taxable

services is different in both income tax law and service tax law. Reliance is placed upon the decision in the case of GEPS Projects Vs. Commissioner of Central Excise and Service Tax, Noida – 2018 (9) TMI 1517 – CESTAT, Allahabad.

- The revenue declared under Income Tax return cannot be considered as revenue for levy of service tax. Demand cannot be raised based on income tax return without identifying the specific taxable service or service recipient. Reliance is placed on the decision in the case of Deltax Enterprises Vs. CCE, Delhi-I – 2018 (10) GSTL 392 (Tri.-Del); CST,ST, Delhi Vs. Convergys India Service Pvt. Ltd. – 2018 (1) TMI 1174 – CESTAT, Chandigarh; CCE Vs. Ramesh Studio & Color Lab – 2010 (5) TMI 466; CCE, Ludhiana Vs. Mayfair Resorts – 2011 (21) STR 589 (Tri.-Del); Ravi Foods Pvt. Ltd. Vs. CCE, Hyderabad – 2011 (266) ELT 399 (Tri.-Bang.); CCE, Ludhiana Vs. Deluxe Enterprises – 2011 (22) STR 203 (Tri.-Del); Kipps Education Centre Vs. CCE, Ludhiana – 2009 (13) STR 422 (Tri.-Del) and Friends Auto Industries Vs. CCE, Ludhiana – 2017 (3) TMI 358.
- In para 6 of the SCN the department has concluded that the reasons for difference in value of services between income tax returns and service tax returns cannot be ascertained as they don't have documentary evidence, therefore, exact service tax liability cannot be adjudged. This clarifies that the department is not in a position to ascertain the exact service tax liability as they don't have documentary evidence. Therefore, the SCN is not maintainable. They rely upon the decision in the case of Shubham Electricals Vs. CST & ST, Rohtak – 2015 (40) STR 1034 (Tri.-Del) which was affirmed by the Hon'ble High Court - 2016 (42) STR J312 (Del.); Coromandel Infotech India Ltd. Vs. Commissioner of GST and CE – 2019 (1) TMI 323; Chopra Bros (India) Pvt. Ltd. Vs. CCE & ST – 2020 (5) TMI) 172.

Calculation of service tax @ 12% without ascertaining whether abatement will be applicable or not is not tenable.

- Extended period is not applicable as there was no suppression of facts with an intent to evade payment of service tax.
- The department has also not alleged that they have suppressed the true taxable value received with intent to evade payment of service tax.
- Non disclosure of information which was not required to be disclosed does not amount to suppression or concealment and accordingly larger period of limitation cannot be invoked.
- As the demand itself is not sustainable, there can be no question of payment of any interest.
- As they are not liable to pay service tax, they cannot be subjected to penalty under Section 77 and 78 of the Finance Act, 1994.

5. Personal Hearing in the case was held on 05.05.2022 through virtual mode. Ms. Devanshi Sharma, Advocate, appeared on behalf of the respondent for the hearing. She reiterated submissions made in the cross-objection and further stated that audit of the firm was conducted and demand is also barred by limitation.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the submissions made in the cross-objections, those made at the time of personal hearing and material available on records. I find that the demand has been raised for the period F.Y. 2014-15 based on the differential amount arising on comparison of the income of the respondent reflected in the Income Tax returns when compared to the taxable value declared in their ST-3 returns. The issue to be determined in the case is whether the adjudicating authority has correctly dropped the demand or otherwise.

6.1 I find that except for reconciliation of the ST-3 returns and the Income Tax returns, no other cogent reason or justification is forthcoming in the SCN for raising the demand against the respondent. It is also not specified as to under which category of service the short

levy/non-levy of service tax is alleged against the respondent. Mere difference between the ST-3 returns and the Income Tax returns, without ascertaining the reasons for the same, cannot form the basis for arriving at the conclusion that the respondent has short paid service tax. The respondent have in their cross-objection submitted that the values indicated in both the returns are as per the respective applicable laws. They have submitted that while the value indicated in the ST-3 returns is the amount received in respect of the services provided by them, the value indicated in the Income Tax returns is calculated as per percentage of the completion method specified in the AS-7 issued by the ICAI and as per Section 129 of the Companies Act, 1956. I find merit in the contention of the respondent as it is a matter of fact that the reporting of income under the Income Tax and in the ST-3 returns are governed by different laws. The contention of the respondent is also supported by the fact that they had during the F.Y. 2011-12 to F.Y. 2013-14 reported a taxable value of Rs.1,40,25,997/- in their ST-3 returns while for the same period, Nil sales was reported in their Income Tax returns. Therefore, mere difference between the returns filed under different laws cannot be a ground for alleging short payment of service tax. Consequently, there is no justification for raising a demand under service tax solely on the grounds that there is a difference between the Income Tax returns and the ST-3 returns.

7. I further find that for the period from October, 2012 to March, 2017, the records of the respondent were subjected to audit by the departmental officers and objections in respect of the issues noticed in the course of the audit were raised in Final Audit Report No. 1577/2016-17 (Service Tax) dated 01.08.2017. However, no issue of short levy/non-levy of service tax on account of difference in Income Tax Returns and ST-3 returns was raised in the said Final Audit Report. Considering this factual aspect, the adjudicating authority has correctly concluded that there is no reason to proceed further in the matter.

8. I find that the CBIC had vide Instruction dated 26.10.2021 directed that :

> "It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.
>
> 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."

8.1 However, in the instant case, I find that no such exercise as instructed by the Board has been undertaken and the SCN has been issued only on the basis of the difference in the ITR and the ST-3 returns. Therefore, on this very ground the demand raised vide the impugned SCN is liable to be dropped.

9. I am also of the considered view that once the department has audited the records of the respondent and found no short reporting of taxable value in their ST-3 returns, it is not anymore open to the department to re-open the issue, that too by invoking the extended period of limitation, solely on the basis of details reported in the income tax returns by the respondent. Therefore, I do not find any infirmity in the findings of the adjudicating authority.

10. The respondent have also contended that the demand is barred by limitation. In this regard, I find that the demand pertains to F.Y. 2014-15 and even by invoking the extended period of limitation, the SCN could have been issued by 25.10.2019 for demanding service tax for the first half of 2014-15. However, the SCN has been issued on 25.06.2020. Therefore, the demand in respect of the period from April, 2014 to September, 2014 is barred by limitation.

11. In view of the above, I am of the considered view that there is no merit in the appeal filed by the department. Accordingly, I uphold the impugned order and reject the appeal filed by the appellant department.

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

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

9th May, 2022.

(Akhilesh Kumar)
Commissioner (Appeals)

Attested:

(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

Date: .05.2022.

BY RPAD / SPEED POST

To

The Assistant Commissioner,
CGST & Central Excise,
Division- Gandhinagar ,
Commissionerate : Gandhinagar — Appellant

M/s. DK Metrocon Private Limited,
Block No.1163, Opposite Amiras Hotel,
Near GIDC, National Highway No.8,
Ahmedabad – 382729 — Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (HQ System), CGST, Gandhinagar. (for uploading the OIA)
4. Guard File.
5. P.A. File.