

आयुक्त का कार्यालय

Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय

Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015

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सत्यमेव जयते

आजदीक
अमृत महोत्सव**By Regd. Post**

DIN No.: 20221164SW000000CB8A

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/654/2022-APPEAL / 4433 -33
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-055/2022-23 and 28.10.2022
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	03.11.2022
(ङ)	Arising out of Order-In-Original No.PLN-AC-STX-07/2021-22 dated 17.01.2022 passed by the Assistant Commissioner, CGST & CE, Division-Palanpur, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Safal Engineers Address:- 2308/2, Ground Floor, Arbudanagar, Vadgam, Palanpur, Gujarat-385410

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.

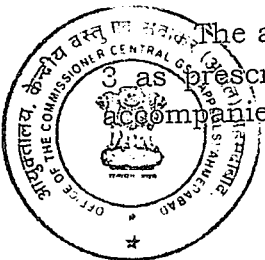
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(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 अपीलो 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।

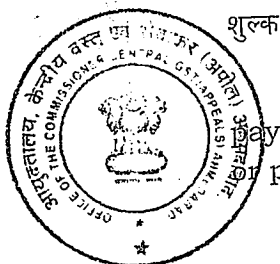
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

This Order arises out of an appeal filed by M/s. Safal Engineers, 2308/2, Ground Floor, Arbudanagar, Vadgam, Palanpur, Banaskantha – 385410 (previously situated at 24, Anand Bunglow, Dairy Road, Palanpur, District - Banaskantha-385001) [hereinafter referred to as “the appellant”] against Order-in-Original No. PLN-AC-STX-07/2021-22, dated 17.01.2022 [hereinafter referred to as “the impugned order”] passed by the Assistant Commissioner, CGST & Central Excise, Palanpur Division, Gandhinagar Commissionerate [hereinafter referred to as “the adjudicating authority”].

2. Facts of the case, in brief, are that the appellant were engaged in providing Works Contract Service to various Government Departments. However, they were not registered with the Service Tax Department. Intelligence was gathered by the officers of Directorate General of GST Intelligence, Ahmedabad (in short DGGI) that certain civil contractors engaged in providing taxable services such as construction services to Government, Local Authority or a Governmental Authority viz. R and B Division, Taluka Panchayat, Nagar Seva Sadan, and the Agriculture Produce Market etc. were not paying service tax on the services provided to them. It was observed that there was a change in legal provision governing such services vide Notification No. 6/2015-Service Tax, dated 01.03.2015, whereby exemptions were withdrawn from certain categories of services, which were earlier exempted from taxable services vide Notification No. 25/2012 - Service Tax, dated 20.06.2012. This was done by way of omission of items (a), (c) and (f) in Entry No. 12 of Notification No.25/2012 – ST, dated 20.06.2012. Subsequently, there was a further change brought about vide Notification No. 9/2016-Service Tax, dated 01.03.2016, whereby entries were inserted in the Notification No.25/2012 – ST, dated 20.06.2012, to make only those works (agreements) to be eligible for exemption, which were entered before 01.03.2015.

2.1. Accordingly, inquiry was initiated against the appellant by the DGGI, Vapi Regional Unit against the appellant under summons proceedings and summons dated 02.12.2016, 05.01.2017, and 27.05.2019 were issued to them for submitting documents relevant for assessment for the period F.Y. 2015-16 to June 2017 for investigation. As the appellant did not respond to the summons, they were issued further letter F. No. IV/16-12/DGGI/VAPI/2018-19 dated 05.06.2020 to provide these documents and reconciliation statement as per Annexure A & B attached to the said letter. As the appellant failed to respond to the letters from the DGGI, information was obtained from the jurisdictional Income Tax authorities like Form 26AS as well as other Financial Statements/Documents for the Financial Years 2015-16 to 2017-18. On perusal of the records/documents made



available by the Income Tax authorities, it was observed that the appellant had provided Works Contract Services to various entities and had received year-wise contract income on which they had failed to discharge the service tax liability as mentioned below:

Sr. No.	Period	Gross Value as per 26AS	Rate of abatement.	Abated value	Net Taxable Value inclusive of ST	Taxable Value	Rate of ST	ST	SBC	KKC	Total
1	2015-16	4287854	30%	1286356	3001498	2671322	14.50	373985	13357	0	387342
2	2016-17	3232140	30%	9696422	22624984	19846477	15.00	2778507	99232	99232	2976972
3	2017-18 (Up. to June 2017)	7928124	30%	2378437	5549687	4868146	15.00	681540	24341	24341	730222
	Total	44537384		13361215	31176169	27385946		3834032	136930	123573	4094535

2.2. On conclusion of investigation, the appellant was issued a Show Cause Notice under F. No. IV/16-12/DGGI/VAPI/2018-19 dated 20.06.2019 demanding service tax (including all Cesses) amounting to Rs. 40,94,535/- under proviso to Section 73(1) of the Finance Act, 1994 read with Section 174 of the Central Goods & Services Tax Act, 2017 along with interest under Section 75 of the Finance Act, 1994. It was also proposed to impose penalty under Sections 77 (1) (a), 77 (1)(c) and 78 of the Finance Act, 1994 read with Section 174 of the Central Goods & Services Tax Act, 2017. It was further proposed to impose penalty under Section 70 read with Rule 7C of the Service Tax Rules, 1994 read with Section 174 of the Central Goods & Services Tax Act, 2017, for failure of filing/submitted ST-3 returns on time.

3. The SCN was adjudicated by the adjudicating authority vide the impugned order wherein the proposals made in the SCN were confirmed.

4. Being aggrieved with the impugned order, the appellant has preferred this appeal on grounds as under:

- (i) They are engaged in providing services to Government, Governmental Authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure meant predominantly for use other than for commerce, industry or any other business & profession, a civil structure used for educational or clinical purpose and a residential complex meant for self-use or the use of the employees,



canal/ dam & other irrigation works, Underground drainage & water line. All supply of services provided by Appellant is exempt service.

(ii) Party wise nature of service provided by appellant is as under:

F.Y.	Service Recipient Name	Description of Service	Amount (in Rs.)
2015-16	R & B Department, Gujarat Government	Repair & Maintenance of Government Staff Quarter	6,18,109/-
	R & B Panchayat Division, Palanpur	Construction of Aanganvadi center	27,59,787/-
	The Agricultural Produce Market Committee, Panthawada	Construction of Underground Gutter	9,09,058/-
	Total F.Y. 2015-16		42,86,954/-
2016-17	Bahisara Sankalit Jalstrav Vyavasthapan Trust	Construction of Bandh Pala for irrigation Purpose	3,77,517/-
	Chala Sankalit Jalstrav Vyavasthapan Trust		5,17,627/-
	Dhanana Sankalit Jalstrav Vyavasthapan Trust		4,57,943/-
	Dedava Sankalit Jalstrav Vyavasthapan Trust		3,02,939/-
	Executive Engineer, Gujarat Government	Repair & Maintenance of Government Staff Quarter	11,06,132/-
	R & B Department, Gujarat Government	Repair & Maintenance of Government Staff Quarter	1,94,502/-
	PIU, Gandhinagar Commissionerate of Health (Education (Health Section))	Construction of Health Mission Sub-center building cluster wise	2,51,72,582/-
	R & B Panchayat Division, Palanpur	Construction of Aanganvadi center	15,93,220/-
	The Agricultural Produce Market Committee, Panthawada	Construction of Canteen Building work at APMC	25,99,394/-
	Total for F.Y. 2016-17		3,23,21,856/-
2017-18	The Agricultural Produce Market Committee, Panthawada	Construction of Underground Water Line, Canteen Building work at APMC	14,25,154/-
	Total April'2017 to June'2017		14,25,154/-
Total -April'15 to June'17			3,80,34,864/-

(iii) On the aforesaid construction work executed in the said disputed period, they had neither charged Service Tax nor paid Service Tax, as they have availed



the benefit of Entry No. 12 (a), (c), (d), (e) & (f) of Mega Exemption Notification - 25/2012 ST dated 20.06.2012. The said entry is reproduced below for your reference:

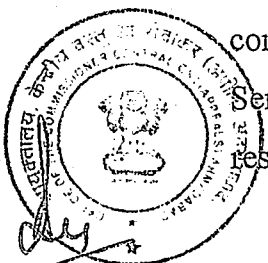
Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of-

- a. a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
- b. a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 {24 of 1958};
- c. a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or
- d. canal, dam or other irrigation works;
- e. pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
- f. a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;

(iv) However, vide Finance Act, 2015 Government withdrew certain exemptions in relation to construction activity. The extract of the entry stated above [12(a),(c) & (f)] were omitted and henceforth becomes taxable w.e.f. 1st April, 2015.

(v) It is submitted that these construction contracts were entered into by appellant well before date of notification 06/2015-ST dated 01.03.2015 which withdrew the exemption. Hence, such contracts being exempt from Service Tax at the time of signing the same; appellant never considered Service Tax in the value of services as agreed in agreement.

(v) However, taking stock of such a situation wherein Government construction contracts are entered into well before deletion of Entry No. 12 (a), (c) & (f) of Notification No. 25/2012-ST and Service Tax become payable on such contracts w.e.f. 01.04.2015 wherein the appellant have to carry the burden of Service Tax on such contracts; Central Government again in Finance Act, 2016 restored the exemption as new Entry No 12A (a), (c) & (f) w.e.f. 01.03.2016 in



limited manner (i.e. exemption shall be applicable on for such contracts that are entered into before 01.03.2015 i.e. date of publication of Notification No. 06/2015-ST).

(vi) The total income considered as per OIO does not match with Actual Working. Appellant would like to summarize year wise income as per Form 26AS as under:

(Amount in Rs.)

Sr. No.	Period	As per Form 26 AS	As per OIO	Difference
1	2015-16	42,87,854	42,87,854	0
2	2016-17	3,23,21,406	3,23,21,406	0
3	2017-18 (upto June)	14,25,154	79,28,124	65,02,970
4	2017-18 (July-March)	65,02,970	0	-
Total	Excess shown in OIO			65,02,970

Based on above submission, the impugned order passed by Ld. Assistant Commissioner needs to be set aside

(vii) The figures reflected in Form 26AS are already available with the department from the concerned year itself as the same is based on the filings done under Income Tax Act by the deductor. Therefore, the said information has never been suppressed by the concerned taxpayer from the department. Further, they have also not indulged in any fraud or collusion or wilful misstatement as the given figures reported in Form 26AS basis which SCN has been issued have been submitted by the counterparties and not the taxpayer and the said information is available for department's perusal right from the year in question. Also, it may not be correct to say that the taxpayer has evaded the tax sought to be recovered for the reason that the basis for such recovery is on the figures of Form 26AS already available for verification by the department within the normal period of limitation. Hence it can be said that in such facts and circumstances, the invocation of the extended period may not be in accordance with the law and hence the SCN in question is required to be vacated.

(viii) In the case of Kush Constructions v. CGST NACIN 2019 (24) G.S.T.L. 606 (Tri. - All.) wherein also Hon'ble CESTAT held that "Revenue cannot raise the demand on the basis of such difference without examining the reasons for the said difference and without establishing that the entire amount received by the appellant as reflected in said returns in the Form 26AS being consideration for services provided and without examining whether the difference was because of



any exemption or abatement, since it is not legal to presume that the entire differential amount was on account of consideration for providing services." Therefore, it can be contended that the SCN issued without categorically identifying the nature of taxable service involved may not be valid on the aforesaid grounds.

(ix) Notwithstanding anything submitted above, according to section 67(2) of the Finance Act, 1994 where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to gross amount charged. Where reliance can be placed on the following:

- I. *Commr. of Cen. Excise & Cus., Patna Versus M/S Advantage Media Consultant & Anr. 2008 (10) TMI 57C- SC*
- II. *Commissioner of Service Tax, Mumbai-I Versus Allied Aviation Ltd. 2017 (4) TMI 438- CESTAT Mumbai*
- III. *Commissioner of Central Excise, Delhi v. Maruti Udyog Ltd. [2012 (141) ELT 3{SC}]*

5. Personal Hearing in the case was held on 09.09.2022 in virtual mode. Mr. Rashmin Vaja, Ms. Bhagyashree Dave and Mr. Forum Dhruv, all Chartered Accountants, appeared for hearing on behalf of the appellant. They re-iterated submission made in the appeal memorandum.

6. I have carefully gone through the facts of the case, grounds of appeal in the Appeal Memorandum and the submissions made by the appellant at the time of Personal Hearing. The issue to be decided in the case is whether the impugned order passed by the adjudicating authority, confirming the demand of Rs. 40,94,535/- 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. 2015-16 to F.Y. 2017-18 (up to June, 2017).

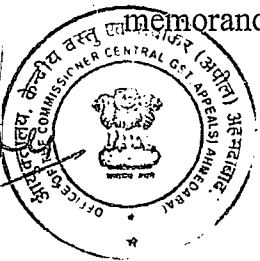
7. It is observed that the appellant is engaged in provision of Works Contract Service to various Government departments and were not registered with the Service Tax department. Investigation were initiated by the officers of DGGI, Vapi against the appellant on account of change in legal provision governing such services vide Notification No. 6/2015 - Service Tax, dated 01.03.2015, whereby exemptions were withdrawn from certain categories of services, which were earlier exempted from taxable services vide Notification No. 25/2012 - Service Tax, dated 20.06.2012. This was done by way of omission of items (a), (c) and (f) in Entry No. 12 of Notification No. 25/2012. Subsequently, there was a further change brought about vide Notification No. 9/2016 -



Service Tax, dated 01.03.2016, whereby entries were inserted in the Notification No. 25/2012 – ST, dated 20.06.2012, to make only those works (agreements) to be eligible for exemption, which were entered before 01.03.2015. As the appellant did not respond to the summons issued by the DGGI, the SCN in question was issued based on the data obtained from the Income Tax department. Further, the impugned order has been passed by the adjudicating authority ex-parte, as the appellant did not file any reply to the SCN nor appeared for the hearing.

7.1. It is the contention of the appellant that they were providing services to Government and Governmental Authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure meant predominantly for use other than for commerce, industry or any other business & profession, a civil structure used for educational or clinical purpose and a residential complex meant for self-use or the use of the employees, canal/ dam & other irrigation works, underground drainage & water line. All supply of services provided by them were exempt service. It was further contended these construction contracts were entered into by appellant well before date of Notification No. 06/2015-ST dated 01.03.2015, which withdrew the exemption and hence, as such contracts, being exempt from Service Tax at the time of signing the same; they never considered Service Tax in the value of services as agreed in agreement. It was also contended that they were not operating from the premises, where communication was given by the department and hence, they could not respond to the communications from the department. They have also contended the quantification of demand for the F.Y. 2017-18, which they claimed was based on the figures of entire financial year, whereas the quantification should have been for the quarter April-June, 2017.

8. As regards the merits of the case, I find that there is no dispute regarding the fact of exemption available to the services provided by the appellant prior to the Notification No. 6/2015 - Service Tax, dated 01.03.2015. Hence, the limited issue to be considered in the case is whether the contracts were entered by the appellant prior to 1.4.2015 so as to be eligible for exemption. They have, in the appeal memorandum, claimed that all the contracts entered in to by them were prior to 1.4.2015 and hence, they were covered under Notification No. 25/2012 – ST, dated 20.06.2012, as amended by Notification No. 9/2016 -Service Tax, dated 01.03.2016. I find that this contention was never made earlier, and has been raised for the first time before the appellate authority. However, no corroborative evidence in support of their contention has been put forth in the appeal memorandum to take a decision in the matter.

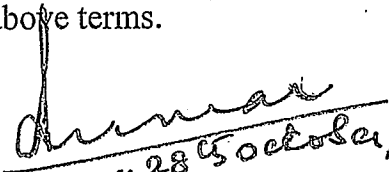


8.1. It is further observed that the appellant had stated that they could not respond to the departmental communications because they had shifted to new premises and that the departmental communications were sent to their earlier address. This is also corroborated by the fact that the adjudicating authority has recorded in the impugned order at Para 11 of the impugned order that the SCN in question was pasted on the principal place of business of the appellant vide Panchnama dated 27.12.2020, as it was found locked by the officer. Hence, in the interest of natural justice, it would be prudent that the appellant should be given a chance to explain their contentions before the adjudicating authority along with all the relevant documents in support of exemptions claimed by them.

9. Accordingly, I allow the appeal filed by the appellant by way of remand to the adjudicating authority, who shall decide the case afresh based on the documents submitted by the appellant after following the principles of natural justice. The appellants are also directed to submit the relevant documents claiming exemption within 15 days of receipt of this order.

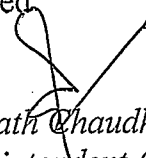
10. अपीलकर्ताद्वारा दर्ज की गई अपीलकानिपटाराउपरोक्ततरीकेसेकियाजाताहै।

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


.. 28th October, 2022 ..
(AKHILESH KUMAR)
Commissioner (Appeals)
Date: 28th October, 2022



Attested


Somnath Chaudhary
Superintendent (Appeals)
CGST Appeals, Ahmedabad

By Regd. Post A. D

M/s. Safal Engineers,
2308/2, Ground Floor, Arbudanagar,
Vadgam, Palanpur, Baniaskantha – 385410

Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Principal Commissioner, CGST and Central Excise, Gandhinagar

3. The Deputy/Asstt. Commissioner, Central GST, Deputy Commissioner of CGST & CE, Palanpur Division, Saradar Patel Vyapar Sankul, Malgodown Road, Mehasana – 384002.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website of office.
- ✓ 5. Guard file
6. PA File

