



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 Regd. Post**

DIN No.: 20230164SW0000023050

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/1822/2022-APPEAL / 7558-62
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-094/2022-23 and 20.01.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	23.01.2023
(ङ)	Arising out of Order-In-Original No. AHM-CEX-003-ADC-PBM-036-21-22 dated 30.03.2022 passed by the Additional Commissioner, CGST & CE, HQ, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Kamlesh B. Patel, Megh Nagar, Office No. 203/B, Plot No. 16, Gandhinagar, Gujarat-382001

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-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।

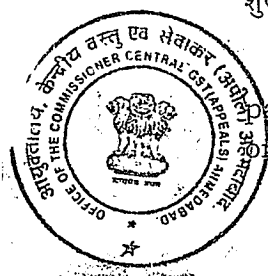
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



अपीलिय आदेश / ORDER-IN-APPEAL

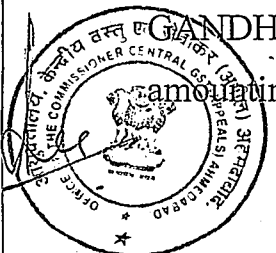
The present appeal has been filed by M/s Kamleshkumar Baldevbhai Patel, Megh Malhar, Office No.203/B, Plot No.16, Gandhinagar, Gujarat-382001 (hereinafter referred to as the appellant) against Order in Original No. AHM-CEX-003-ADC-PBM-036-21-22 dated 30.03.2022 [hereinafter referred to as “*impugned order*”] passed by the Additional Commissioner, Central GST and CX, Gandhinagar Commissionerate [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case are that the appellant were engaged in providing ‘Works Contract Service’ and were holding Service Tax Registration No. ABOPP6878JSD002 for the same. Data in the form of Income Tax Returns (ITR) and Form 26AS (TDS) for the appellant were received from the Income Tax department for the period F.Y.2015-16 and F.Y.2016-17 which reflected discrepancies in the total income. In order to verify the said discrepancies and to provide the details of services provided during the F.Y.2015-16 and F.Y.2016-17, letters dated 09.04.2021 and 16.04.2021 were issued to the appellant. However, they failed to submit the required details. It was observed that the appellants had filed ST-3 returns for the F.Y.2015-16 and F.Y.2016-17.

2.1 The services provided by the appellant were considered taxable under the definition of ‘Service’ as defined under Section 65 B (44) of the Finance Act, 1994 (FA, 1994). The Service Tax liability of the appellant was quantified considering the amount declared under “sales of services” shown in the ITR-5 as taxable income and the same was calculated as under :

Sr. No	Details	F.Y. 2015-16 (in Rs.)	F.Y. 2016-17 (in Rs.)
1	Total Income as per ITR-5	6,00,81,313/-	7,79,68,432/-
2	Income on which Service Tax paid	1,45,93,480/-	1,63,04,800/-
3	Difference of Value - (Sr.No.1 – Sr.No.2)	4,54,87,833/-	6,16,63,632/-
4	Service Tax alongwith Cess (14.5% for the F.Y.2015-16 and 15% for F.Y.2016-17)	65,95,735/-	92,49,544/-
5	Net Amount of demand	65,95,735/-	92,49,544/-
	Total	Rs.1,58,45,280/-	

2.2. The appellant was issued a Show Cause Notice No. ADC-PMR-027/21-22 under F.No. GEXCOM/SCN/GST/376/2021-ADJN-o/o COMMR-CGST-GANDHINAGAR dated 22.04.2021 for demand and recovery of Service Tax amounting to Rs. 1,58,45,280/- under proviso to sub-section (1) of Section 73 of



the Finance Act, 1994 along with interest under Section 75 of the Act. The SCN also proposed imposition of penalties under Sections 77(2), 77(3)(c) and 78 of the Finance Act, 1994.

3. The SCN was adjudicated by the adjudicating authority vide the impugned order wherein :

- Demand of Rs. 1,58,45,280/- was confirmed alongwith interest.
- Penalty of Rs.10,000/- was imposed under Section 77(2) of the Finance Act,1994.
- Penalty of Rs.10,000/- was imposed under Section 77(3)(c) of the Finance Act,1994.
- Penalty of Rs. 1,58,45,280/- was imposed under Section 78 of the Finance Act,1994.

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

- They are engaged in providing services of subcontracting electric works for construction of any civil structure like school, anganwadi, government employee quarters etc. for government authorities. The details of work are mentioned in the work order between the main contractor and the appellant. The services rendered by them during the period are classifiable under the category of 'Works Contract Service', while adjudicating authority has confirmed the demand on ad-hoc manner considering the differences in turnover between Form ITR-4 and Form-ST-3 without classifying the service under appropriate category. Hence, the demand is not maintainable. They have also cited the decision of CESTAT, Chandigarh in the case of M/s Arindra Electricals Vs. Commissioner of Central Excise & ST, Chandigarh – [2018 (9) TMI 86 – Cestat, Chandigarh], wherein the demand confirmed under a particular Class of service was set aside due to change in classification of service.
- As they have provided works contracts service to government / semi-government bodies in the form of Electrical Works, their services are liable to be covered under Entry No.29 read with Entry No.12 of Notification



No.25/2012-ST dated 20.06.2012. Although some exemptions under the said notification was withdrawn, they were restored vide notification No.09/2016-ST dated 01.03.2016.

- In terms of CBIC Circular F.No. 334/8/2016-TRU dated 29.02.2016 regarding claiming of refund, they are eligible for refund of Service Tax paid during the F.Y.2015-16. They also furnished a table claiming exemption from the total income during the period covered in the SCN which read as :

Sr. No	Financial year	Total Income (in Rs.)	Income on which exemption claimed (in Rs.)
1	2015-16	6,04,55,427/-	3,09,74,025/-
2	2016-17	7,83,78,538/-	5,06,57,613/-

- In terms of Notification No. 24/2012-ST, dated 06.06.2012, their works contract services are eligible for abatement @ 60% and in terms of Notification No.30/2012-ST dated 20.06.2012, they are eligible for payment of service tax under Reverse Charge Mechanism. In some of their transactions/contracts, the service recipient had discharged the entire tax liability and provided certificates to that extent, copies of certificates were produced. Summarising their eligibilities of exemptions, they have furnished the liability in tabulated form as below :

Fin.Yr.	Total Income (Rs.)	Income on which exemption claimed (Rs.)	Income on which tax paid by appellant (Rs.)	Income on which tax paid by Service Recipient (Rs.)
2015-16	6,04,55,427/-	3,09,74,025/-	1,45,15,773/-	1,49,65,629/-
2016-17	7,83,78,538/-	5,06,57,613/-	1,62,06,742/-	1,15,14,183/-

These facts were not considered by the adjudicating authority.

- During the period F.Y.2015-16, they have paid Service Tax on a total income of Rs.1,49,65,629/- and during F.Y. 2016-17 they have paid service tax on the taxable value of Rs.1,15,14,183/- and in support they have submitted copies of declarations from Service receivers. In such circumstances, the demand raised vide impugned order would amount to double taxation which is legally not sustainable. They also relied the following decisions in this regard;



- Decision of CESTAT, Bangalore in the case of Crniment Alloys India Limited Vs Commissioner of Central Excise, Vishakhapatnam [2013 (7) TMI 593].
 - Decision of CESTAT, Ahmedabad in the case of Mandev Tubes Vs. Commissioner of Central Excise, Vapi [2009 (5) TMI 102].
- The impugned order also contains some factual errors in showing the Income of the appellant as per ITR-4.
 - Service Tax audit of the records of the appellant were conducted for the period October-2016 to June-2017 and Final Audit report (FAR) No.CE/ST-537/2021-22 dated 20.03.2022 was issued. The paras raised by the audit party regarding payment of Service Tax under Reverse Charge Mechanism on Legal fees and transportation charges were settled by the appellant after making the requisite payments. Hence the income of the appellants has already been assessed by the authorities.
 - They claimed cum-duty benefit on the gross value charged by the service recipients in terms of Section 67(2) of the Finance Act,1994.
 - They contested the imposition of penalties as no demand of Service Tax is sustainable against them.
 - Alongwith their appeal memorandum they have submitted following documents :
 - copies of original Contracts executed by various service receivers with the respective Government departments,
 - copies of sub-contracts executed between the appellant and the service receiver in relation to the main contract with the Government department,
 - copies of ITR-4's filed by the appellant,
 - copies of declarations issued by the service recipients,
 - list showing the number of agreements executed with various parties during the period,
 - documents evidencing Government contracts being executed during the period and copies of various citations.

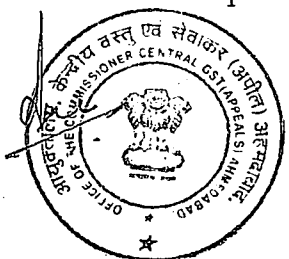


5. Personal Hearing in the case was held on 08.12.2022. Ms Bhagyashree Dave and Ms. Foram Dhruv, both Chartered Accountants, appeared on behalf of appellant for the hearing. They have explained the submissions made in the application for condonation of delay and reasons for delay in filing the appeal, which appeared to be cogent and convincing. Considering the submissions and explanations during personal hearing, the delay in filing appeal is condoned in terms of proviso to Section 85 (3A) of the Finance Act, 1994.

5.1 Thereafter, personal hearing in the case was held on 09.01.2023. Ms Bhagyashree Dave and Ms. Foram Dhruv, both Chartered Accountants, appeared on behalf of appellant for the hearing. They reiterated the submissions made in the appeal memorandum.

6. I have gone through the facts of the case, submissions made in the appeal memorandum and oral submissions made during the personal hearing. The issue to be decided in the case is whether the impugned order issued against the appellants, confirming the demand of Rs.1,58,45,280/- alongwith interest and penalties, is legal and proper or otherwise. The demand pertains to the period F.Y.2015-16 and F.Y.2016-17.

7. It is observed from the case records that the appellant is registered with the service tax department for providing services under Works Contract Service. The SCN in the case was issued only on the basis of data received from the Income Tax department. It is also observed from the SCN that the demand has been proposed without ascertaining the class of service rendered by the appellant as they had paid Service Tax during the period F.Y.2015-16 and 2016-17, however, no further verification has been caused so as to ascertain the exact nature of services provided by the appellant. It is undisputed that the appellants have filed their ST-3 returns and paid Service Tax during the period F.Y.2015-16 and 2016-17. As Works Contract Service, being eligible for abatement under Rule-2A of the Service Tax (Determination of Value) Rules, 2006 (as amended), as well as also liable for service tax under Reverse Charge Mechanism in terms of Notification No. 30/2012-ST dated 20.06.2012, hence appropriate inquiry was required to ascertain the taxability of the services provided by the appellant and the nature of exemptions available to them (if any). Hence, the SCN issued in this case is vague.



8. The appellants have contended that their services are rendered as sub-contractors for providing electrical works contract pertaining to original work in respect of Government and semi-government departments. Therefore, they are eligible for abatement under Service Tax (Determination of Value) Rules, 2006 (as amended) as well as for benefit of Reverse Charge Mechanism in terms of Notification No. 30/2012-ST dated 20.06.2012. They also contended that they have paid excess amount of Service Tax during the period F.Y.2015-16 and that, they did not get an opportunity to present their case before the adjudicating authority. I find that the impugned order was adjudicated ex-parte on the basis of the demand of service tax proposed vide the SCN, which was issued entirely on the basis of data received from the Income Tax department. No further investigations were conducted.

9. I find it relevant to refer to the CBIC Instruction dated 26.10.2021, wherein at Para-3 it is instructed that:

...
 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 and the impugned order has been issued indiscriminately and mechanically without application of mind, and is vague, being issued in clear violation of the instructions of the CBIC discussed above. Further, as the impugned order has been passed ex-parte, the violation of principles of natural justice is apparent.

10. It is further observed that the appellant have in their appeal memorandum submitted details and various documents in their defense. They have also submitted that 'Service Tax Audit' of their records were conducted for the period October, 2016 to June, 2017 and Final Audit Report No. CE/ST-537/2021-22 dated 25.03.2022 was issued by the Assistant Commissioner, Circle-VIII, CGST Audit, Ahmedabad wherein it is recorded that :



...

Services : *Works Contract Service ,*

Period of Last Audit Conducted : *First Audit*

Period of Audit : *October-2016. to June-2017;*

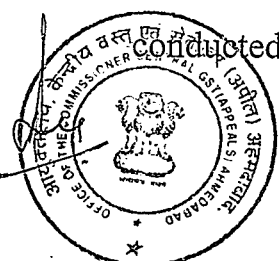
Date on which Audit undertaken : *28.02.2022*

Summary of Major Audit objections from the working papers

Sr. No	Gist of Objections	Revenue Implication (Rs.)	Assessee's Agreement	Remarks
1	Penalty on late filing of ST-3 returns for the period Oct.-2016 to Mar-2017	Penalty: 8,300/- Total: 8,300/-	Agreed & Paid	Para Settled as assessee made the payment (ST-CSR070)
2	Non payment of Service Tax under RCM on the expenses incurred under the head of Legal Fees during the year 2016-17	S.Tax: 4,050/- Int. :2,998/- Penalty: 607/- Total: 7,655/-	Agreed & Paid	Para Settled as assessee made the payment (ST-CSR070)
3	Non payment of Service Tax under RCM on the expenses incurred under the head of Freight/Transportation Expenses during the period 2016-17 and April-2017 to June-2017	S.Tax: 2,500/- Int. :1,828/- Penalty: 375/- Total: 4,703/-	Agreed & Paid	Para Settled as assessee made the payment (ST-CSR070)

...

In view of the above facts, it is confirmed that the department was fully aware of the services rendered by the appellant during the F.Y. 2016-17 as well as to the fact that the Service Tax was paid and ST-3 returns were filed by them. Further, upon verification of the ST-3 returns vis-à-vis Financial records of the appellant, a Final Audit Report No. CE/ST-537/2021-22 dated 25.03.2022 was issued. The Paras drawn in the FAR were nowhere related to the allegations made in the SCN and confirmed vide the impugned order. The audit report was issued before the issuance of the impugned order. Under such circumstances, the confirmation of demand of Service Tax for the second half of period F.Y.2016-17 i.e October-2016 to March-2017 under proviso to sub-section (1) of Section 73 of the Finance Act, 1994 invoking the extended period of limitation becomes infructuous. Hence, I find that the impugned order has been issued indiscriminately and are legally not sustainable. Even otherwise, the demand for second half of F.Y.2016-17 (October-2016 to March, 2017) is legally unsustainable, being covered under the audit conducted by the department.



11. I find that the appellant have in their appeal memorandum submitted various documents i.e copies of original Contracts executed by various service receivers with the respective Government departments, copies of sub-contracts executed between the appellant and the main contractor in respect of the works contract with the Government department, copies of ITR-4's filed by the appellant, copies of declarations issued by the service recipients, list showing the number of agreements executed with various parties during the period, documents evidencing Government contracts being executed during the period and copies of various citations. They have also claimed benefits under the Service Tax (Determination of Value) Rules, 2006 (as amended) as well as benefit of Reverse Charge Mechanism in terms of Notification No. 30/2012-ST dated 20.06.2012. The submissions of the appellant were also not perused by the adjudicating authority earlier as also neither did they attend the personal hearing granted, nor any submissions were made by them in their defense. Accordingly, the submissions of the appellant are being presented before this authority for the first time. Therefore, in view of the discussions made above, the demand confirmed for the period October-2016 to March-2017 is not legally sustainable and is liable to be set aside. It would be in the fitness of things and in the interest of natural justice that the demand for the remaining period i.e F.Y.2015-16 and April-2016 to September-2016 confirmed by the adjudicating authority be remanded back for denovo adjudication after considering the submissions made by the appellant, after verifying various documents submitted by them and after affording the appellant opportunity of filing their defense reply as well as granting them personal hearing.

12. In view of the discussions made above, I pass the order as below :

(i) The demand of Service Tax for the period October-2016 to March-2017 confirmed vide the impugned order is set aside. As the demand of service tax for the period is not sustained, question of interest and penalty does not arise.

(ii) The remaining portion of the demand i.e for the period F.Y.2015-16 and April-2016 to September-2016 confirmed vide the impugned order alongwith interest and penalties is remanded back to the adjudicating authority for denovo adjudication after considering all the documents and



submissions made by the appellant, and following the principles of natural justice.

(iii) The appellant is directed to submit their written submission to the adjudicating authority within 15 days of the receipt of this order. The appellant should also attend the personal hearing as and when fixed by the adjudicating authority.

The appeal filed by the appellant is allowed by way of remand.

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.

Akhil Kumar
20th January, 2023.
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 20th January, 2023

Attested:

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



BY RPAD / SPEED POST

To
M/s Kamleshkumar Baldevbhai Patel,
Megh Malhar, Office No.203/B,
Plot No.16, Gandhinagar,
Gujarat-382001

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Commissionerate - Gandhinagar.
3. The Additional Commissioner, Central GST and CX, Gandhinagar Commissionerate.
4. The Assistant Commissioner (HQ System), CGST, Ahmedabad South. (for uploading the OIA)
- ✓ 5. Guard File.
6. P.A. File.