



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.: 20230164SW000000FE71

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/895/2022-APPEAL / 7902-06
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-097/2022-23 and 24.01.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	25.01.2023
(ङ)	Arising out of Order-In-Original No. PLN-AC-STX-18/2021-22 dated 22.02.2022 passed by the Assistant Commissioner, CGST, Division-Palanpur, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Gurukrupa Infracon, 99, Jivandhar Society, Nr. Shantiniketan School, Chanasma Road, Patan, Gujarat-384265

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:-

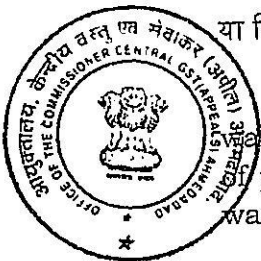
Revision application to Government of India:

(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 हों।

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.

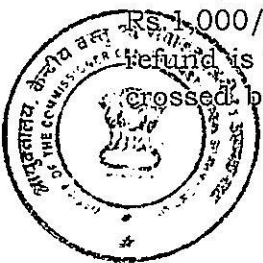
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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."



अपीलियआदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s. Gurukrupa Infracon, 99, Jivandhar Society, Near Shantiniketan School, Chanasma Road, Patan-384265 (hereinafter referred to as the appellant) against Order in Original No. PLN-AC-STX-18/2021-22 dated 22.02.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division: Palanpur, Commissionerate: Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant were registered with Service Tax department under Registration No. AAMFG5072ASD001 for providing various services - Construction of Complex other than residential complex, including commercial/industrial buildings or civil structures, Transport of Goods by Road/Goods Transport Agency, Works Contract Service. Income Tax Returns (ITR-5) for the period F.Y.2015-16 of the appellant alongwith the details of Form 26AS (TDS) filed with the Income Tax department was received from the Directorate General of Systems, New Delhi. As the appellant had not filed their Service Tax Returns (ST-3) for the period F.Y.2015-16, various letters were issued to them to verify whether they had discharged their Service Tax liabilities during the said period. The appellants failed to file any reply to the queries. However, they filed a reply to the pre-Show Cause Notice consultation vide which they informed that during the period F.Y.2015-16; they had carried out 'Works Contract Service' as sub-contractor to M/s Patel Foundation (main contractor) and carried out works/services related to 'Sarva Shiksha Abhiyaan' (SSA) project of the government. They also submitted that the Service Tax liability was discharged by M/s Patel Foundation, being main contractor, and they have filed the ST-3 returns also.

2.1. As per ITR-5 of the appellant for the F.Y. 2015-16, an amount of Rs.7,24,16,976 /- was shown as sale of services. It was also observed that the nature of service provided by the appellant were covered under the definition of 'Service' as per Section 65 B(44) of the Finance Act, 1994 (FA,1994), and their services were not covered under the 'Negative List' as per Section 66D of the FA,1994. Further, their services were not exempted vide the Mega Exemption Notification No. 25/2012-S.T dated 20.06.2012 (as amended). Hence, the services provided by the appellant during the relevant period were considered taxable.



2.2. In terms of Notification No. 24/2012-ST dated 06.06.2012, an abatement of 60% was granted on the gross income and an amount of Rs. 36,43,764/- was considered as exempted in terms of Notification No. 09/2016-S.T dated 01.03.2016, while calculating the Service Tax liability of the appellant for the F.Y.-2015-16 on the basis of 'Sales of Services' shown in the ITR-5 of the relevant period. Their Service Tax liability was calculated as per details below:

Table

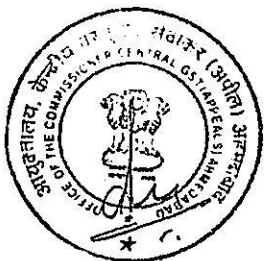
Sr. No	Details	F.Y. - 2015-16 (Amount in Rs.)
1	Total Income as per ITR-5	7,24,16,976/-
2	Income on which Service Tax paid	0/-
3	Exempted Value	36,43,764/-
4	Abatement (@ 60%)	4,12,63,927/-
5	Taxable Value [1-(2+3+4)]	2,75,09,285/-
6	Amount of Service Tax alongwith Cess not paid /short paid (12% Basic + 2% E.Cess+1% H.E.Cess)	39,19,909/-

3. The appellant was issued a Show Cause Notice vide F.No. GEXCOM/SCN/ST/1192/2020-CGST-DIV-PLN-COMMRTE dated 19.10.2020 (in short 'SCN') wherein it was proposed to:

- Demand and recover service tax amounting to Rs.39,19,909/- under the proviso to Section 73 (1) of the Finance Act, 1994 alongwith Interest under Section 75 of the Finance Act,1994;
- Impose penalty under Sections 77(2), 77(1)(C) and 78 of the Finance Act, 1994 and under the provisions of Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act,1994;

4. The said Show Cause Notice was adjudicated vide the impugned order wherein:

- demand for Rs. 39,19,909/- was confirmed under Section 73(1) of the Finance Act,1994alongwith interest under Section 75 of the Finance Act,1994.
- Penalty of Rs.10,000/- was imposed under the provisions of Section 77(1)(C) of the Finance Act, 1994.
- Penalty of Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994;
- Penalty of Rs.40,000/- was imposed under Section 70 of the Finance Act, 1994 ;



- Penalty amounting to Rs.39,19,909/- was imposed under Section 78 of the Finance Act, 1994 with option for reduced penalty vide clause (ii).

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

- They had carried out works as sub-contractors of M/s Patel Foundation as per the terms and conditions of M/s Patel Foundation. The work pertained to 'Sarva Shiksha Abhiyaan' project of Government of India and R&B department. The works carried out being Government Contract are exempted in terms of Sl. No. 12A of Notification No.25/2012-ST, dated 20.06.2012 as amended. Work orders entered before 01.03.2015 qualify for the exemption granted vide Serial No.12A of Notification No.25/2012-ST, dated 20.06.2012 as amended, which are tabulated as under:

Sr. No	Work Order date	Department	Work Order Amount (Rs.)
1	07/02/2015	Sarva Shiksha Abhiyaan (SSA)	36,71,481/-
2	08/07/2014	Sarva Shiksha Abhiyaan (SSA)	20,13,297/-
3	04/03/2014	R & B	5,91,291/-
4	07/02/2015	Sarva Shiksha Abhiyaan (SSA)	34,67,147/-
5	07/02/2015	Sarva Shiksha Abhiyaan (SSA)	33,86,520/-
		TOTAL	1,31,29,736/-

- As per their agreement with the main contractor – M/s Patel Foundation, the leviable service tax was paid by the main contractor and they have deducted the said tax amount from the Invoices issued to the appellant. The main contractor has also produced challans evidencing payment of Service Tax made by them on behalf of the appellant.
- The main contractor has also issued a certificate to the extent that Service Tax liable to the appellants were paid by them. They relied the following citations:
- Decision of CESTAT in the case of Vijay Sharma & Co. Vs. CCE- (2010) Del : 029 STT 0001 (2010) 020 STR 0309.
 - Ms Katrina R.Turcotte Vs Commissioner of Service Tax, Mumbai-I : [2013] 41 STT 19.
 - Decision of CESTAT, Ahmedabad in the case of Navyug Alloys Pvt.Ltd Vs. CCE & C, Vadodara – II : 2008 (8) TMI 100
- The amount of Service Tax paid by the main contractor was detailed as

under:



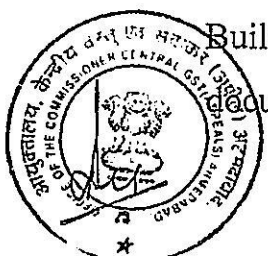
Sr.No	Department	Work Amount (Rs.)	Service Tax paid (Rs.)	Date of Payment
1	Sarva Shiksha Abhiyaan (SSA)	79,88,208/-	4,47,340	04.01.2016
2	Sarva Shiksha Abhiyaan (SSA)	76,50,888/-	4,28,450	04.01.2016
3	Sarva Shiksha Abhiyaan (SSA)	56,99,412/-	3,19,188	04.01.2016
4	Sarva Shiksha Abhiyaan (SSA)	38,63,128/-	2,16,335	21.04.2016
5	Road & Building Department	1,05,73,484/-	6,13,262	06.04.2016 & 21.04.2016
6	Sarva Shiksha Abhiyaan (SSA)	28,95,523/-	1,67,940	21.04.2016
7	Sarva Shiksha Abhiyaan (SSA)	83,24,756/-	4,82,836	21.04.2016
8	Sarva Shiksha Abhiyaan (SSA)	86,48,097/-	5,01,590	21.04.2016
	Total	5,56,43,496/-		

- The fact of payment of Service Tax by the main contractor is also reflected in the order passed by the Commissioner, CGST, Ahmedabad (North). In terms of Section 73A of the Finance Act, 1994, the main contractor is liable to deposit the tax amount collected by them from the appellant.
- They contended the invocation of extended period and imposition of penalties under Section 77 & 78 of the Finance Act, 1994 and relied on the following decisions :
- Cestat Kolkata in the case of Sourav Ganguly Vs. Commissioner of Service Tax, Kolkata;
 - Hindustan Steel Vs State of Orissa – 1978 ELT (J159).

6. Personal Hearing in the case was held on 15.12.2022. Shri Arpan Yagnik, Chartered Accountant, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in appeal memorandum.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum and during personal hearing as well as materials available on records. The issue before me for decision is whether the impugned order issued by the adjudicating authority, confirming the demand of Service Tax amounting to Rs.39,19,909/- alongwith interest and imposing penalties, is legal and proper or otherwise. The demand pertains to the period F.Y.2015-16.

8. It is observed from the case records that the appellants have during the relevant period provided services as sub-Contractors to main/original Contractor – M/s Patel Foundation. They had provided 'Works Contract Service' pertaining to Sarva Shiksha Abhiyaan (SSA) Scheme of Government of India and Road & Building Department (R&B) of the government in the state of Gujarat. The documents contained in the appeal memorandum further confirm that the services



provided by the appellant were as per the contracts entered between the appellant and the main contractor and, thereafter, Work Orders were issued in favour of the appellant. It is also observed that the works carried out by the appellant during the period are covered under the definition of 'Works Contract Service' and are taxable services. The appellants are liable to pay service tax as sub-contractors unless they are covered under exemptions contained under the Notification No. 25/2012-ST, dated 20.06.2012 as amended. They have not filed their ST-3 returns for the period. These are undisputed facts.

8.1. In order to analyze the matter in proper perspective, it would be pertinent to examine the relevant Entry No. 12 of the Mega Exemption Notification No. 25/2012 – ST dated 20.06.2012 which reads as under:

“12. 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-

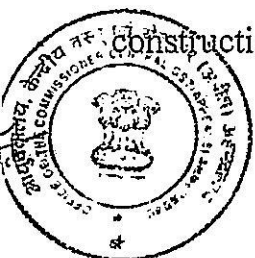
(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

...

29 (h) services by the sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt.”

8.2. The exemption under Serial No. 12 (a) were omitted vide Notification No. 06/2015 – ST dated 01.03.2015 w.e.f. 01.04.2015. Subsequently, the exemption was restored vide Notification No. 09/2016 – ST dated 1.3.2016 w.e.f. 1.3.2016 by making a new Entry No. 12 A in the said notification. The exemption was available for a contract which has been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, has been paid prior to such date.

8.3. Further, Section 102 was inserted in the Finance Act, 1994 by the Finance Act, 2016, w.e.f. 14.05.2016, providing for exemption in certain cases relating to construction of Government buildings. The relevant text are reproduced below:



"102. (1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable 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 structure meant predominantly for use as— (i) an educational establishment; (ii) a clinical establishment; or (iii) an art or cultural establishment;

(c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act,

under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.

8.4. It is observed that the period of dispute pertains to F.Y. 2015-16. As per the above legal provisions, the exemption is available for construction of government buildings, the contracts for which has been entered into prior to 1st March, 2015. As a logical consequence, the exemption to sub-contractor is available under Works Contract only when the services provided by the contractor is exempt. The appellant have contended that some of the Work Orders totally amounting to Rs. 1,31,29,736/-, executed by them during the F.Y.2015-16, were actually entered into before 01.03.2015, and by virtue of Serial No.12A of Notification No.25/2012-S.T. dated 20.06.2012 (as amended), these works/services are exempted from the levy of Service Tax. The appellant had raised this contention before the adjudicating authority as well. However, he has dismissed their contention by observing at Para-10 of the impugned order that for computation of the Service Tax liability in the SCN for the F.Y. 2015-16, taxable value amounting to Rs.36,43,764/- has been considered exempted by virtue of Notification No. 09/2016-ST, dated 01.03.2016. Hence, I find that the findings of the adjudicating authority to that extent have been arrived at without considering the submissions of the appellant, which is in violation of the principles of natural justice.

9. The appellant have also contended that the remaining work-contracts / work-orders executed by them during the period F.Y.2015-16 were entered into after



01.03.2015 and are liable for Service Tax. However, the leviable amount of Service Tax on the services were paid by the main contractor – M/s Patel Foundation. These facts are also confirmed vide letter dated 23.03.2022 issued by the main contractor M/s Patel Foundation, which has been submitted alongwith appeal memorandum, wherein they have confirmed that they have made payment of Service Tax amounting to Rs. 39,49,271/- against the Works Contract Value of Rs.7,24,16,976/- on behalf of the appellant, after deducting payment of Service Tax from the Invoices of the appellant.

9.1. In this regard, I find that the adjudicating authority has denied the exemption claimed by the appellants under Sr.No.29 (h) of Notification No.25/2012–S.T., dated 20.06.2012, stating that the services provided by main contractors are not exempt. He has also denied the contention made regarding double taxation and found that the amount of Service Tax paid by the main Contractor on behalf of the appellant is available to the main contractor as Cenvat credit in terms of the Cenvat Credit Rules, 2004 and confirmed an amount of Rs. 39, 19, 909/- as Service Tax levied on a taxable value of Rs. 2,75,09,285/- against the appellant vide the impugned order.

9.2. It is the contention of the appellant that the Service Tax leviable on the contracts entered into by them after 01.03.2015 have been paid by their main contractor – M/s Patel Foundation. They have submitted copies of Bank Challans to substantiate the fact that although the Service Tax were credited by M/s Patel Foundation, they were against the liability of the appellant. In support of payment of Service Tax by the main contractor – M/s Patel Foundation - during the F.Y.2015-16, they have submitted copy of OIO No. AHM-EXCUS-002-COMMR-57/2021-22 dated 01.02.2022 passed by the Commissioner, CGST, Ahmedabad North Commissionerate, alongwith the appeal papers. They have also submitted a copy of Ledger account wherein it is reflected that during the period F.Y.2015-16, an amount of Rs.39,49,271/- was paid by M/s Patel Foundation against the Service Tax liability of the appellants. It is the contention of the appellant that the fact of deposition of Service Tax amounting to Rs.39,19,909/- (collected from the appellant) by the main contractor in terms of Section 73A of the Finance Act, 1994 is also not in dispute.



10. In this regard, I find it relevant to refer to Ministry of Finance (MoF), Department of Revenue (DoR), Tax Research Unit (TRU) Circular No.96/7/2007-ST New Delhi, the 23 rd August, 2007 issued from F.No.354/28/2007-TRU which was issued as a Master Circular for clarification of various issues raised over a period of time. Relevant portions of the Master Circular is reproduced below :

*Government of India
Ministry of Finance
Department of Revenue
Tax Research Unit*

Sub: Clarification on technical issues relating to taxation of services under the Finance Act, 1994 - Regarding.

Service Tax was introduced in the year 1994 with three taxable services. At present, one hundred services are specified as taxable services. Since the introduction of service tax, number of clarifications in the form of circulars / instructions / letters have been issued by the Central Board of Excise & Customs (CBEC), Director General (Service Tax) and field formations.

...

6. This circular supersedes all circulars, clarifications and communications, other than Orders issued under section 37B of the Central Excise Act, 1944 (as made applicable to service tax by section 83 of the Finance Act, 1994), issued from time to time by the CBEC, DG (Service Tax) and various field formations on all technical issues including the scope and classification of taxable services, valuation of taxable services, export of services, services received from outside India, scope of exemptions and all other matters on levy of service tax. With the issue of this circular, all earlier clarifications issued on technical issues relating to service tax stand withdrawn.

...

9. ...

Reference Code	Issue	Clarification
(1)	(2)	(3)
999.03 / 23.08.07	<i>A taxable service provider outsources a part of the work by engaging another service provider, generally known as sub-contractor. Service tax is paid by the service provider for the total work. In such cases, whether service tax is liable to be paid by the service provider known as sub-contractor who undertakes only part of the whole work.</i>	<i>A sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor. Services provided by sub-contractors are in the nature of input services. Service tax is, therefore, leviable on any taxable services provided, whether or not the services are provided by a person in his capacity as a sub-contractor and whether or not such services are used as input services. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the service provided.</i>

...



I find that the above circular issued by the MoF, GOI was in supersession of all previous Circulars, hence the clarification given by the same prevails as a statute over all disputes. Applying the ratio of the above clarification to the facts and circumstances of the present case, I find that the services provided by the appellant as a sub-contractor are in the nature of input service for the main contractor and the final service provided by the main contractor – M/s Patel Foundation is taxable and hence they have paid the leviable Service Tax. Therefore, the services provided by the appellant is to be held as taxable.

10.1 I also refer to the decision of the CESTAT Larger Bench, New Delhi in the case of Commissioner of Service Tax, New Delhi Vs Melange Developers Private Limited reported 2020 (33) G.S.T.L. 116 (Tri. - LB). The larger bench of the Tribunal was constituted for deciding the matter relating to the issue as to whether a sub-contractor is liable to pay service tax even if the main contractor has discharged the service tax liability on gross amount. The Hon'ble Larger Bench has ruled that :

...

29. *The submission of the Learned Counsel for the Respondent regarding 'revenue neutrality' cannot also be accepted in view of the specific provisions of Section 66 and 68 of the Act. A sub-contractor has to discharge the Service Tax liability when he renders taxable service. The contractor can, as noticed above, take credit in the manner provided for in the Cenvat Credit Rules of 2004.*

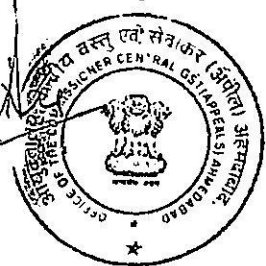
30. *Thus, for all the reasons stated above, it is not possible to accept the contention of the Learned Counsel for the Respondent that a sub-contractor is not required to discharge Service Tax liability if the main contractor has discharged liability on the work assigned to the sub-contractor. All decisions, including those referred to in this order, taking a contrary view stand overruled.*

31. *The reference is, accordingly, answered in the following terms :*

"A sub-contractor would be liable to pay Service Tax even if the main contractor has discharged Service Tax liability on the activity undertaken by the sub-contractor in pursuance of the contract."

...

11. In view of the above discussions and judicial pronouncement of the larger bench of CESTAT, New Delhi supra, I am of the considered view that the services provided by the appellant during the period F.Y.2015-16 are taxable and the appellants are required to pay the applicable amount of Service Tax on the considerations received. However, it is also observed that the appellant has contended that some of the contracts were entered into prior to 01.03.2015 for which exemption was available. This aspect requires consideration by the adjudicating authority afresh for which the matter needs to be remanded back.



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

(i) The matter relating to claim of exemption by the appellant for work orders, purportedly entered in to before 01.03.2015, amounting to Rs.1,31,29,736/- by virtue of Notification No. 25/2012-ST dated 20.06.2012 as amended, is remanded back to the adjudicating authority for consideration afresh after following the principles of natural justice.

(ii) The demand for the remaining work orders entered into after 01.03.2015 for the period of F.Y.2015-16 alongwith interest and penalties is upheld. However, as the matter is remanded back to the adjudicating authority for consideration of the claim of appellant for work orders purportedly entered into prior to 01.03.2015, the actual amount of demand and penalty will be dependent upon findings of the adjudicating authority in this regard.

(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.

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

Attested:

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

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4. The Assistant Commissioner (System), CGST, Appeals, Ahmedabad. (for
uploading the OIA)
- ~~5. Guard File.~~
6. P.A. File.

