



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 SPEED POST

DIN:- 20231064SW000002070B

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/3224/2022-APPEAL / 6616 - 30
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-102/2023-24 and 25.09.2023
(ग)	पारित किया गया / Passed By	श्री शिव प्रताप सिंह, आयुक्त (अपील) Shri Shiv Pratap Singh, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	04.10.2023
(ङ)	Arising out of Order-In-Original No. KLL DIV/ST/YOGENDRA SINGH RAWAT/139/2022-23 dated 23.09.2022 passed by the Assistant Commissioner, CGST, Division-Kalol, Gandhinagar Commissionerate.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Vinodchandra Khodidas Parkar, 78, Mathuresh Society, B/h Market Yard, ONGC Road, Kalol, Gandhinagar, Gujarat-382721.

कोई व्यक्ति इस अपील-आदेश से असंतोष 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:-

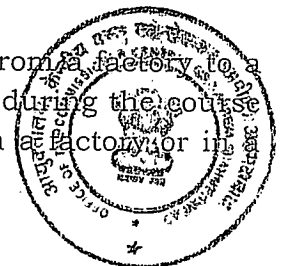
Revision application to Government of India:

(1) केंद्रीय 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 प्रक्रिया 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.

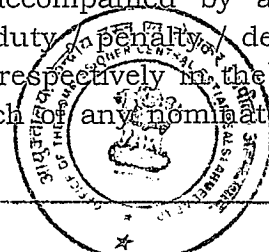
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 or 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 or 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 पढ़ी 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 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 रु 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपील के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

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

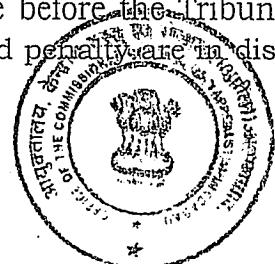
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

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

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

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

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



अपीलिय आदेश/ ORDER-IN-APPEAL

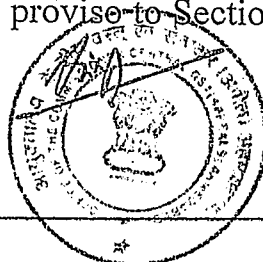
The present appeal has been filed by M/s Vinodchandra Khodidas Parkar, 78, Mathuresh Society, B/h Market Yard, ONGC Road, Kalol, Gandhinagar, Gujarat-382721 [hereinafter referred to as "the appellant"] against KLL DIV/ST/YOGENDRA SINGH RAWAT/139/2022-23 dated 23.09.2022 [hereinafter referred to as "the impugned order"] passed by the Assistant Commissioner, CGST & Central Excise, Division: Kalol, Gandhinagar Commissionerate [hereinafter referred to as "the adjudicating authority"].

2. Briefly stated, the facts of the case are that the appellant were engaged in providing taxable services under Service Tax Registration No.AMTPP7011KSD002. As per the information received from the Income Tax department, discrepancies were observed in the total income declared by the appellant in their ST-3 Returns when compared with their Income Tax Return (ITR-5) and details of Form 26 AS for the period F.Y. 2014-15. In order to verify, an email dated 19.06.2020 was issued to the appellant calling for the details of services provided during the said period. The appellant did not submit any reply. However, the jurisdictional officers considered that the services provided by the appellant during the relevant period were taxable under Section 65 B (44) of the Finance Act, 1994 and the Service Tax liability for the F.Y. 2014-15 was determined on the basis of difference between the value of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR) and taxable value shown in ST-3 Return for the relevant period as per details below:

Table

Sr.No	Details	F.Y. 2014-15 (Amount in Rs.)
1	Taxable value as per Income Tax Data i.e. Total Amount Paid/Credited under section 194C, 194H, 194I, 194J or Sales/Gross Receipts from Services (From ITR)	60,76,245/-
2	Taxable Value declared in ST-3 Return	4,52,844/-
3	Differential Taxable Value (S.No-1-2)	56,23,401/-
4	Amount of Service Tax along with cess (12% Basic + 2% E. Cess + 1% H. E. Cess) not paid / short paid	6,95,052/-

2.1 Show Cause Notice F.No. GEXCOM/SCN/ST/1029/2021-CGST-DIV-KLL-COMMRT-GANDHINAGAR dated 25.06.2020 (SCN in short) was issued to the appellant wherein it was proposed to demand and recover service tax amounting to Rs. 6,95,052/- for the period F.Y. 2014-15 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 was proposed under Section 77(2), 77C and 78 of the Finance Act, 1994.

2.2 The SCN was adjudicated vide the impugned order wherein the demand for service tax amounting to Rs. 6,39,027/- (appropriated Service Tax amounting to Rs. 56,025/- considering the same as paid) was confirmed along with interest. Penalty amounting to Rs. 6,39,027/- was imposed under Section 78 of the Finance Act, 1994 alongwith option for reduced penalty in terms of proviso to clause (ii).

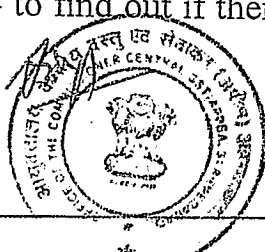
3. Being aggrieved with the impugned order, the appellant have filed the instant appeal on following grounds:

- The appellant is a labour contractor engaged in providing manpower supply to M/s. UGVCL (Uttar Gujarat Vij. Company Ltd.) for the period from 2014-2015 and registered with the Service Tax Department vide Service Tax Registration Number AMTPP7011KSD002 under the category of "Manpower Recruitment/Supply Agency Service".
- They submitted that the show cause notice is vague and cryptic as no legal case has been made against the appellant based upon the nature of activity being carried out by the appellant. However, the adjudicating authority has confirmed the demand of Rs. 6,39,027/- against the appellant by incorporating the case against the appellant which is not the part of the show cause notice. The adjudicating authority cannot travel beyond the scope of show cause notice, following which the order is liable to set aside. They relied on the following citations :

- Jeevan Diesels & Electricals Limited V. Commissioner of Central Excise, Customs & Service Tax, Bengaluru- III' – 2017 (2) TMI 58 - KARNATAKA HIGH COURT.
- GODREJ INDUSTRIES LTD. VERSUS COMMISSIONER OF C. EX., MUMBAI, 2018 ACR 35 Supreme Court
- Ashok Bhan and V.S. Sirpurkar, JJ. No.- 3630-3631 of 2002 with 3761-3762, 7638-7646 of 200 dated July 30th 2008
- 2014 (8) TMI 579 - CESTAT NEW DELHI
- Other Citation: 2013 (30) S.T.R. 356 (Tri. - D)



- Toyota Kirloskar Motor (P.) Ltd. v. CCE [CEA No. 47 of 2009, dated 28-3-2011] (para 6.1)
 - CCE & C v. Schott Glass India (P.) Ltd. [2009] 21 STT 111 (Guj.) (para 7)
 - Association of Leasing & Financial Service Co. v. Union of India [2010] 7 taxmann.com 740/29 STT 316 (SC) (para 7)
 - Sudhesh Sharma v. CCE [2010] 24 STT 149 (New Delhi – CESTAT) (para 7)
 - CCE v. Ashok Singh Academy [2009] 23 STT 181 (New Delhi – CESTAT) (para 7)
- They submitted that the show cause notice dtd. 25.06.2020, baldly alleged that the Appellant have rendered taxable services. However, the show cause notice dated 25.06.2020 does not analyse the activities allegedly carried out by the Appellants and whether the same would fall within the definition of any taxable services. It is settled principle of law that unless and until the clear analysis of the activity done by the assessee is carried out, demand of service tax cannot be confirmed. Reliance is placed upon the following decisions:
- United Telecom 2011(22) STR 571 (Tri. -Bang)
 - Swapnil Asnodkar 2018 (10) GSTL 479 (Tri.- Mumbai)
 - Balaji Enterprises 2020 (33) GSTL 97 (Tri. Del)
 - ITC Ltd. 2014 (33) STR 67 (Tri. Del)
 - Kafila Hospitality & Travels Pvt. Ltd. Vs. Commissioner, Service tax,
 - Delhi. 2021 (3) TMI 773-CESTAT New Delhi (LB)
- Further, the department has issued the impugned show cause notice based on the data gathered on analysis, undertaken by the Central Board of Direct Taxes, and received information from Income Tax Department, and has not verified any documents and facts in the hand of the noticee.
- Thus, it can be concluded that the impugned SCN was issued by solely placing reliance on the figures as appearing in the Audited Financial Statements and Income Tax Returns of the noticee. The entire proceedings have been initiated in the impugned SCN on the basis of Income Tax Returns of the noticee, which the authorities compared with the service tax returns to find the difference in figures of turnover. The adjudicating authority should have verified the same in terms of Section 71 of the Finance Act, 1994 to find out if there was any short



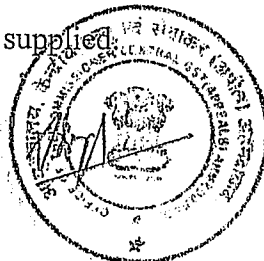
payment of tax. The demand raised merely on the basis of Income Tax returns cannot allege fraud or suppression in as much as the data is shared by income tax department and then compared with service tax returns, whether filed or not, and mere nomenclature in accounts cannot determine the levy of tax on the services / receipts of noticee. They rely on various judgements of Hon'ble Courts and Tribunal.

- The Appellant submit that the demand cannot be raised based on the revenue shown in the ITR/Form 26A without identifying the specific taxable service or service recipient and the mega exemption notification. The service tax liability should be attributed to identifiable taxable service provided to another person and the exemption if applicable. The revenue shown in the balance sheet cannot form basis for confirming service tax demand. They rely on the various judgments of Hon'ble Courts and Tribunal.
- The Manpower Recruitment or supply agency service was defined under the erstwhile section 65(68) of the Finance Act, 1994. The definition as given in the provision is represented below for reference –

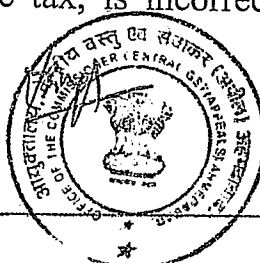
‘Manpower recruitment or supply agency’ means any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to any other person’.

The above-mentioned service is enumerated in the reverse charge notification no. 30/2012 under serial no. 8 as ‘any service provided or agreed to be provided by way of supply of manpower for any purpose or security service’.

- As per the provision in the notification the service tax under reverse charge on supply of manpower for any purpose or security service was paid partially by the service provider and service receiver in the ratio of 25:75 respectively up to 31st March, 2015. The proportion of service tax liability paid in the ratio of 25% and 75% is amended to substitute to NIL and 100% with effect from 01.04.2015 vide notification no. 7/2015 dated 1st March, 2015.
- Here the definition has following ingredients only:
 - (i) It is the definition of the term supply of man power only.
 - (ii) The supply of manpower may be temporary or otherwise.
 - (iii) It should be a supply to another person.
 - (iv) The person so supplied has to work under his superintendence or control, meaning he has to work under the person to whom such person is supplied.



- In the present case, agreement for manpower supply is between Appellant and other companies, and both the parties have treated and considered the said service as 'Manpower Supply service', thereby, service tax is payable by the service recipient in terms of Notification 07/2015-ST dated 01.03.2015.
- It is submitted that when contractor supplies labours for work, it will be considered as manpower supply service, if, labours work under supervision of contractors and principal employer has no control on labours then it is not manpower supply service.
- Since payment of service tax is liable to be paid by service receiver, then the service tax should not be demanded again on said identical services from the service provider. Therefore, the demand should not be raised on the noticee for the manpower supply services provided and covered under Reverse Charge Mechanism.
- In view of the above, noticee have placed the reliance on below mentioned Judgments, where it was held that there cannot double taxation of same services:
 - Hon'ble CESTAT, Principal bench New-Delhi in case of COMMISSIONER OF SERVICE TAX, MEERUT-II v/s GEETA INDUSTRIES P. LTD reported at 2011 (22) S.T.R. 293 (Tri. - Del.)
 - Hon'ble CESTAT, Appellant St Zonal Bench, Ahmedabad in case of MANDEV TUBES v/s COMMISSIONER OF CENTRAL EXCISE, VAPI reported at 2009 (16) S.T.R. 724 (Tri. - Ahmd.)
 - Hon'ble CESTAT, Appellant Zonal Bench, Ahmedabad in case ANGIPLAST PVT. LTD. V/s COMMISSIONER OF SERVICE TAX, AHMEDABAD reported at 2009 (16) S.T.R. 724 (Tri. - Ahmd.)
- Further, Appellant submitted that the issue of leviability of service tax is subject to interpretation of law and as per the Appellant no service tax is payable on the disputed amount, hence no intention to suppress any material fact can be attributed against the Appellant. In this regard, they rely on various judgements of Hon'ble Courts & Tribunal.
- Moreover, the Appellant has submitted all information asked for by the department and has never suppressed any information. Based on the reasons given above, it is submitted that the allegation of the department that the Appellant has suppressed the facts about their activities from the Department, with an intention to evade payment of service tax, is incorrect. Hence, the



extended period of limitation cannot be invoked in the present case and the demand is time barred.

- Moreover, the Appellants submitted that they have furnished all information required, as and when sought by the department. Further, the issue involved in the present case is one of interpretation of law. The Appellants were under a bonafide belief that they are not liable to pay service tax, as explained above. Therefore, there can be no allegation of suppression of facts in the present case. Hence, the entire demand is hit by time bar. In this regard, they rely on various judgements of Hon'ble Courts & Tribunal.
- The Appellants submit that for imposing penalty under Section 78 of the Act, there should be an intention to evade payment of service tax, or there should be suppression or concealment of material facts. The Appellants have provided all the details as and when desired by the Department vide the letters to the Department and the Appellants at no point of time had the intention to evade service tax or suppressed any fact wilfully from the knowledge of the Department.
- Further, the Appellants were and still, are of the bona-fide belief that the service in question was excluded from the levy of service tax as per statutory provisions under the Finance Act.
- It is submitted that 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, it can also be contended that the taxpayer has 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. In support of the above contentions, they rely on various judgements of Hon'ble Courts and Tribunal.
- Eventually, they requested to Set aside the impugned Order and allow the appeal with consequential reliefs.

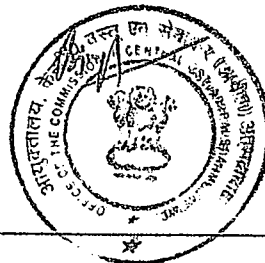


4. Personal Hearing in the case was held on 07.08.2023. Shri Sourabh Singhal, CA appeared for personal hearing on behalf of the appellant. He reiterated submissions made in the appeal memorandum. He also submitted that the appellant provided manpower supply service for which, their liability was only 25% on RCM basis. The appellant had already discharged his tax liability and also filed service tax return. He requested to set aside the impugned order.

4.1 The appellant submitted an additional written submission vide which they submitted that :

- The services income earned by them by way of providing Works Contract Services to Government authority stands covered by Entry No. 12A of notification No. 25/20121-ST dated 20.06.2012 and therefore they are not liable to pay any service tax on the said amount.
- The SCN issued by the department had alleged that they have not paid Service Tax amounting to Rs. 6,39,027/- for providing services during the period F.Y. 2014-15.
- During the period F.Y. 2014-15 they have provided services pertaining to Manpower Supply Service and Works Contract Service related to Erection, Commissioning and Installation service (underground cable network and fault finding) to M/s Uttar Gujarat Vij Company Limited (UGVCL) which is a governmental authority. These facts are also reflected in their Service Tax Return. Illustrative sample copies of contract/agreement were also submitted by them alongwith their earlier submission.
- These services provided by them are squarely covered under exempted services in terms of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 and therefore the same may be considered and the demand confirmed vide the impugned order is liable to be dropped.

5. I have carefully gone through the facts of the case available on record, grounds of appeal in the appeal memorandum, additional submission, oral submissions made during personal hearing and the impugned order passed by the adjudicating authority. The issue to be decided before me in the present appeal is whether the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, confirming the demand of service tax amounting to Rs. 6,39,027/- under proviso to



Section 73 (1) of Finance Act, 1994 alongwith interest, and penalties is legal and proper or otherwise. The demand pertains to the period F.Y. 2014-15.

6. It is observed that the appellant are registered with the department and have filed their ST-3 Returns. However, the SCN in the case has been issued only on the basis of the data received from the Income Tax Department without ascertaining the nature of services provided or classifying them. It is apparent that no further verification has been caused to ascertain the nature of service and whether any exemptions/abatements were claimed by the appellant. Hence, the SCN was issued in clear violation of the CBIC Instructions dated 20.10.2021, relevant portion of the Instructions is re-produced as under :

...

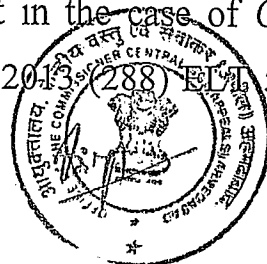
3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee

...

Considering the facts of the case and the specific Instructions of the CBIC, I find that the SCN was issued indiscriminately and is vague.

7. It is further observed that the appellants have filed their ST-3 Returns for the period F.Y. 201-15 and their assessment was never disputed by the department. This implies that the appellant have made complete disclosures before the department and the department was aware about the activities being carried out by the appellant and these facts are not disputed. However, the demand of service tax was confirmed vide the impugned order invoking the extended period of limitation in terms of Section 73 (1) of the Finance Act, 1994. In this regard I find it relevant to refer the decision of the Hon'ble Supreme Court of India in the case of *Commissioner v. Scott Wilson Kirkpatrick (I) Pvt. Ltd. - 2017 (47) S.T.R. J214 (S.C.)*], wherein the Hon'ble Court held that "...ST-3 Returns filed by the appellant wherein they Under these circumstances, longer period of limitation was not invocable".

7.1 Further, the Hon'ble High Court of Gujarat in the case of *Commissioner v. Meghmani Dyes & Intermediates Ltd.* reported as 2013 (288) ELT 514 (Guj.) ruled



that "if, prescribed returns are filed by an appellant giving correct information then extended period cannot be invoked".

- I also rely upon the decision of various Hon'ble Tribunals in following cases :
 - (a) *Aneja Construction (India) Limited v. Commissioner of Service Tax, Vadodara* [2013 (32) S.T.R. 458 (Tri.-Ahmd.)]
 - (b) *Bhansali Engg. Polymers Limited. v. CCE, Bhopal* [2008 (232) E.L.T. 561 (Tri.-Del.)]
 - (c) *Johnson Matthey Chemical India P. Limited v. CCE, Kanpur* [2014 (34) S.T.R. 458 (Tri.-Del.)]

7.2 In view of the above judicial pronouncements, I find that the impugned order have been passed in clear violation of the settled law and is therefore legally incorrect, unsustainable and liable to be set aside on these grounds alone.

8. Regarding the merits of the case, it is observed that during the period F.Y. 2014-15 the appellant have provided taxable services to M/s Uttar Gujarat Vij Company Limited (UGVCL) only. From the Form – 26AS for the F.Y. 2014-15 submitted by them it is apparent that they have received a total amount of Rs. 60,76,246/- under Section 194C of the Income Tax Act, 1961 from M/s UGVCL. Apart from the said amount they have not received any amount under Section 194C/194H/194J of the Income Tax Act, 1961 during the period F.Y. 2014-15. These facts confirm that the appellant have provided services only to M/s UGVCL during the relevant period. It is also observed that during the relevant period they have filed their ST-3 Returns, classifying their services under 'Manpower recruitment/Supply Agency Service' and/or 'Works Contract Service'. The appellant have contended that the services provided by them to Ms. UGVCL are covered under Sr.No. 12 (a) of notification No. 25/2012-ST dated 20.06.2012. Hence, they are eligible for exemption in respect of these services.

8.1 Here, I find it relevant to refer to Notification No 25/2012-ST dated 20.06.2012, relevant portion is reproduced below :

Government of India
Ministry of Finance
(Department of Revenue)
Notification No. 25/2012-Service Tax

New Delhi, the 20th June, 2012



G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17 th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17 th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

1. *Services provided to the United Nations or a specified international organization;*

...

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—*

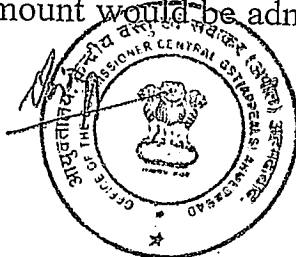
(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

...

8.2 Upon examining the above legal provisions with the facts of the case I find that the agreement/contract documents produced by the appellant confirm the fact that they have provided services related to 'Erection, Commissioning and Installation' to M/s UGVCL during the period. Further M/s UGVCL being a wholly owned subsidiary of the Government of Gujarat stand covered under the definition of Government Authority as well as M/s UGVCL are engaged in the work of production and distribution of Electricity for the general public in parts of the state of Gujarat. Further, the contract/agreement also confirms that the work executed by them are original works therefore, the services provided to M/s UGVCL by the appellant during the period F.Y. 2014-15 merit exemption in terms of Sr. No. 12 (a) of the Notification No. 25/2012-ST dated 20.06.2012, as amended.

9. In view of the above discussions I am of the considered opinion that the impugned order confirming the demand of Service Tax amounting to Rs. 6,39,027/- alongwith interest and penalty are liable to be set aside being legally unsustainable. As the demand of service tax fails to sustain, question of interest and penalty does not arise.

10. Accordingly, the impugned order is set aside. However, the Service Tax amounting to Rs. 56,025/- paid by the appellant was a voluntary payment made by them upon self assessment of their periodical returns. Also the said amount has not been disputed and therefore no refund of the said amount would be admissible to the appellant.




15. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.


(SHIV PRATAP SINGH)
Commissioner (Appeals)

Dated: 25 Sept, 2023

सत्यापित /Attested:


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



By REGD/SPEED POST A/D

To,
M/s Vinodchandra Khodidas Parkar
78, Mathuresh Society, B/h Market Yard,
ONGC Road, Kalol, Gandhinagar, Gujarat-382721

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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, Division- Kalol, Gandhinagar Commissionerate.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.
- ✓ 5. Guard file
6. PA File