



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
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**By SPEED POST**

DIN:- 20231064SW000000A068

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/4572/2023-APPEAL / 1537-41
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-110/2023-24 and 25.10.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील्स) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	25.10.2023
(ङ)	Arising out of Order-In-Original No. PLN-AC-ADJ-STX-42/2023-24 dated 12.06.2023 passed by the Assistant Commissioner, CGST, Division-Palanpur, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Mohmadhusen Attahusen Faruki, Pachwada, Bukdi, Patan - 384265

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:-

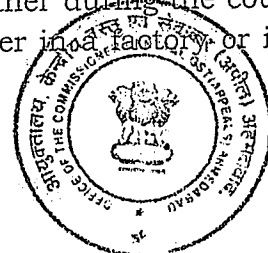
**Revision application to Government of India:**

(1) 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, 4<sup>th</sup> 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 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 ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-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 संलग्न रकम 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.

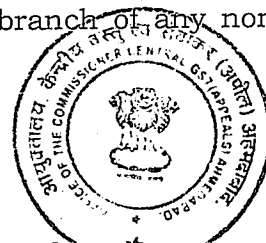
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 पढ़ी कार्य में वचने के लिए यथास्थिति अपील 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 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 और 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।

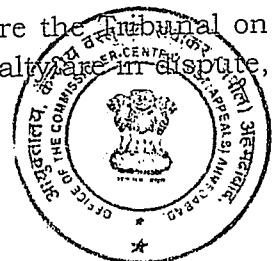
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 Mohammadhusen Attahusen Faruki, Pachwada, Bukdi, Patan-384265 (hereinafter referred to as the appellant) against Order in Original No. PLN-ac-ADJ-STX-42/2023-24 dated 12.06.2023 [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 not registered under Service Tax and were holding PAN NO. AAIPF4404D. Upon perusal of the data received from Central Board of Direct Taxes (CBDT) it was observed that during the period F.Y. 2016-17 the appellant had earned substantial service income by way of providing taxable services. It was also observed that they have neither obtained registration under Service Tax nor had paid any Service Tax during the period. In order to seek information in the matter, letter dated 14.10.2021 was issued to the appellant calling for the details of services provided during the period F.Y. 2016-17. The appellant did not submit any reply.

2.1 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 was determined on the basis of value of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR) or "Total amount paid/credited under Section 194C, 194I, 194H & 194J of Income Tax Act, 1961" shown in the ITR-5 and Taxable Value shown in ST-3 return for the relevant period as per details below :

Table-A

Sr. No	F. Y.	Sale of Services (as per ITR)	Total Value for TDS (including 194C, 194 IA, 194Ib, 194J, 194H0	(Amount in Rs)	
				Higher Value (Value Difference in ITR&STR)	Total Service Tax short paid/not paid (including Cess)
1	2016-17	1,03,39,822/-	0	1,03,39,822/-	15,50,973.3/-

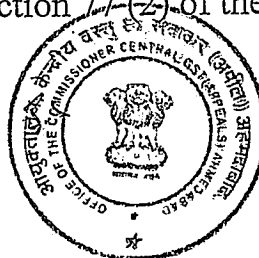
3. Show Cause Notice vide F.No. GEXCOM/SCN/ST/9706/2021-CGST-DIV-PLN-COMMRTE-GANDHINAGAR dated 19.10.2021 (in short 'SCN') was issued to the appellant, wherein it was proposed to:



- Demand and recover service tax amounting to Rs. 15,50,973.3/- under the proviso to Section 73 (1) of the Finance Act, 1994 for the period F.Y. 2016-17 (considering the amount of Rs. 1,03,39,822/- as Taxable Value) alongwith Interest under Section 75 of the Finance Act, 1994 ;
- Demand and recover Service Tax not paid during the period F.Y. 2017-18 (upto June 2017), ascertained in future, 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 Section 77(1)(a), 77(1)(b), 77(1)(c)(i), 77(1)(c)(ii), 77(2) and Section 78 of the Finance Act, 1994;

4. The said SCN was adjudicated *ex-parte* vide the impugned order wherein :

- the demand for service tax amounting to Rs. 15,50,973.3/- leviable on differential taxable value of Rs. 1,03,39,822/- for the period F.Y. 2016-17 was confirmed under Section 73 (1) of the Finance Act, 1994 alongwith interest under Section 75.
- demand for service tax not paid for the period F.Y. 2017-18 (upto June 2017) to be ascertained in future, was confirmed under Section 73 (1) of the Finance Act, 1994 alongwith interest under Section 75
- Penalty amounting to Rs. 15,50,973.3/- was imposed under Section 78 of the Finance Act, 1994 alongwith option for reduced penalty under proviso to clause (ii).
- Penalty of Rs.10,000/- was imposed under Section 77(1)(a) of the Finance Act, 1994;
- Penalty of Rs. 20,000/- was imposed for failure to file the returns in due time for the Year 2016-17 under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.
- Penalty of Rs.10,000/- was imposed under Section 77(1)(b) of the Finance Act, 1994
- Penalty of Rs.10,000/- or @ Rs.200/- per day till the date of compliance was imposed under Section 77(1)(c)(i) and Section 77(1)(c)(i) of the Finance Act, 1994
- Penalty of Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994;



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

- The appellant is holding PAN: AAIPF4404D, was engaged in providing services viz Construction of roads, Transportation of building materials like sand, ballast stone etc. During financial year 2016-17, they have received work of Construction of roads, which was to be constructed for PATAN NAGARPALIKA, out of the grant received by the PATAN NAGARPALIKA from a Government authority known as Gujarat Urban Development Company Ltd (GUDC). The PATAN NAGARPALIKA had awarded original contract to SHRI MUKESHBHAI SALVI (main Contractor), and the main Contractor had sub-contracted the same work to the appellant for carrying out the construction of roads for the PATAN NAGARPALIKA. A copy of the Work Order No. 17/2016-17 dated 29.04.2016 issued by the PATAN NAGARPALIKA for allocation of work under GUDC grant, for estimated amount of Rs. 45,81,520/- was submitted. A copy of the Contract dated 05.05.2016 executed between the main Contractor and the Appellant was also submitted.
- The services of Construction of Cement concrete roads, so provided by the main contractor to the PATAN NAGARPALIKA was exempted from payment of Service Tax vide clause (a) of Serial No. 13 of the Notification No. 25/2012-ST dated 20.06.2012. The Construction and Works-contract services provided by a sub-contractor to a principal contractor is exempted from levy of Service Tax vide clause (h) of Serial No. 29 of the Notification No. 25/2012-ST dated 20.06.2012, where the Construction service provided by the principal contractor is exempt.
- The appellant has also provided services of transportation of sand (balu) and ballast stone (gitti) during the financial year. They used to transport sand (balu) and ballast stone (gitti) within city limits and in this business, it is not required or not customary to issue Lorry Receipt (Consignment Note), and the Appellant had also not issued and Lorry Receipt (Consignment Note). Therefore, the Appellant is not a Goods Transport Agency. Copy of a sample invoice were enclosed.
- Gross Receipts from the Construction business was Rs. 56,50,343/- and Gross Receipts from the Transportation business was Rs. 46,89,479/-, resulting in



total of Rs. 1,03,39,822/-, which was allegedly considered to be taxable services in the impugned order. Both the above services were either exempt or non-taxable, and hence, the appellant neither provided any taxable service, nor it was liable for payment of Service Tax. The Appellant was hence neither liable to pay Service Tax, nor liable for obtaining Service Tax registration. The Appellant, accordingly, did not obtain the Service Tax registration and not paid Service Tax on the exempted services provided by the Appellant

- The impugned O-I-O is not a speaking order to the extent, it fails to provide the proper Service Tax category and classification under which the services are allegedly classified, as Service Tax cannot be made applicable without a proper classification. The Adjudicating Authority had failed to justify the classification adopted for the purpose of levying Service Tax and the only basis behind the assumption taken by the Adjudicating Authority is the Form 26AS received from the CBDT.
- The services of Construction of Roads are exempt from Service Tax vide Entry no. 13(a) of the Notification No. 25/2012-ST dated 20.06.2012. Further, where the Construction service provided by the principal contractor is exempt, then the same services provided by a sub-contractor to a principal contractor is also exempted from levy of Service Tax vide clause (h) of Serial No. 29 of the Notification No. 25/2012-ST dated 20.06.2012. Hence, the Construction services provided by the appellant to the tune of Rs. 56,50,343/- was exempted from payment of Service Tax, and therefore, the impugned O-I-O is liable to be set aside to that extent
- The Appellant is not a Goods Transport Agency. Copy of a sample invoice was submitted. The services of transportation of goods provided by a person, who is not a Goods Transport Agency, were undisputedly covered under the Negative List and Service Tax and was not leviable on same. Therefore, the Transportation services so provided by the appellant to the tune of Rs. 46,39,479/- was undisputedly covered under the Negative List and hence, Service Tax was not leviable on same. Therefore, the impugned O-I-O is liable to be set aside to that extent.



- The Appellant was not providing any taxable service and hence, the Appellant was not required to obtain Service Tax registration. It was settled position of under the Service Tax statute that a person providing only exempted services was not required to obtain Service Tax registration. Therefore, where the Service Tax registration itself was not required, there arise no question of payment of Service Tax or imposition of Penalty for not obtaining Service Tax registration.
- The SCN for the period of 2016-17 and 2017-18 (upto June 2017) issued on 19.10.2021 was time-barred, as there is no suppression of facts or fraud and hence, the Adjudicating Authority has travelled beyond the four corners of laws while invoking the extended period. The Appellant is providing exempted and non-taxable services, therefore, there arise no question of any motive for suppression of facts. In addition, the Appellant had already disclosed the same figures to the Income Tax department, and hence, the allegation of suppression appears absurd to the extent that the Appellant had offered the alleged amount to the Income Tax authorities for tax payment, and suppressed the same from the Service Tax department. The information relied on by the Adjudicating Authority is already on public domain and was always accessible by the Service Tax department. The Service Tax department and the Income Tax department, both being under the same Ministry, i.e., the Finance Ministry of India, it cannot be said that the data which was available with one wing of the Finance Ministry was suppressed by the Appellant from another wing. The appellant was of opinion that the services provided by the Appellant to the main contractor were exempt and there was no requirement to obtain Service Tax registration, or to make payment of Service Tax or to file Service Tax returns, and hence he was not required to submit the above information and documents with the Service Tax department, and by no stretch of imagination or interpretation of law, this can be treated as suppression of fact. Therefore, the Adjudicating Authority has grossely erred in invoking extended period of limitation, and hence the impugned O-I-O is liable to be set aside, as well as the SCN is liable to be quashed.
- The issue is wholly interpretational, where the Appellant has provided Works contract services by way of Construction of Roads to the main contractor, which were exempt vide Entry no. 13(a) (*supra*) and Entry 29(h) (*supra*) above;

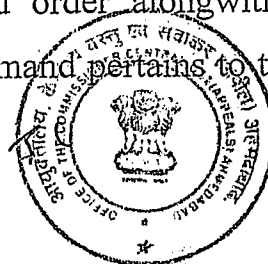


and service of transportation of goods, which were covered under the Negative list vide clause (p)(i)(A) of Section 66D of the Finance Act 1994. where the original demand itself is wrong in law and liable to be dropped, there arise no question of payment of interest. the Appellant was not liable to obtain the Service Tax registration itself, and hence there arise no question of filing of returns, and therefore, the Adjudication Authority had grossly erred by imposing penalties under Section 70 and Section 77 of the Finance Act, 1994. Thus, the impugned O-I-O, in itself is not sustainable as it is non-speaking and is liable to be set aside/dropped for that reason alone in as much as it is against the principal of natural justice and equity.

6. Personal Hearing in the case was held on 15.09.2023. Shri Vikash Agarwal, Chartered Accountant, appeared on behalf of the appellant for the hearing. He submitted that the appellant provided road construction work as a sub-contractor for Patan Nagarpalika. Further, the appellant provided transport service in respect of transport of sand etc. as individual transporter without issuing any consignment note. The works contract service in respect of road construction is exempt under the Notification No. 25/2012-ST and the transport service, other than GTA falls under negative list of services under Section 66D of the Finance Act, 1994. He requested for the grant of exemption from service tax under Sr.No. 13(a) read with 29(h) of the said notification alongwith benefit of the negative list of service, and to set aside the impugned order.

6.1 On account of change in appellate authority personal hearing was again held on 10.10.2023. Shri Vikash Agarwal, Chartered Accountant, appeared on behalf of the appellant for the hearing. He re-iterated the contents of the written submission and requested to allow their appeal. At the time of Personal Hearing he submitted a copy of the audited Balance Sheet.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during hearing, subsequent written submissions dated 10.10.2023 and the facts available on records. The issue to be decided in the present appeal is whether the demand for Service Tax amounting to Rs. 15,50,973.3/- confirmed vide the impugned order alongwith interest and penalties is legal and proper or otherwise. The demand pertains to the period F.Y. 2016-17.



8. It is observed that the appellant is holding PAN: AAIPF4404D and during the period F.Y. 2016-17 were engaged in providing services viz Service of Construction of roads and Transportation of building materials like sand, ballast stone etc and their Proprietorship firm was under the name and style of M/s Jisan Construction. It is further observed from the case records that the SCN in the case was issued only on the basis of data received from the Income Tax department without causing any verification. Here, I find it relevant to refer to the CBIC Instruction dated 26.10.2021, wherein at Para-3 it is instructed that:

*Government of India  
Ministry of Finance  
Department of Revenue  
(Central Board of Indirect Taxes & Customs)  
CX & ST Wing Room No.263E,  
North Block, New Delhi,  
Dated- 21<sup>st</sup> October, 2021*

*To,  
All the Pr. Chief Commissioners/Chief Commissioners of CGST & CX Zone, Pr.  
Director General DGGI*

*Subject:-Indiscreet Show-Cause Notices (SCNs) issued by Service Tax Authorities-reg.*

*Madam/ Sir,*

*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*

Examining the specific Instructions of the CBIC as above with the facts of the case, I find that the SCN in the case has been issued mechanically and indiscriminately without causing any verification and without application of mind, and is vague, being issued in clear violation of the instructions of the CBIC discussed above.

9. It is also observed that the impugned order has been issued in violation of natural justice as the said order was issued ex-parte. Further, at Para 17 the impugned order, it has been recorded that no Written Submission was filed by the appellant. At Para 18 of the impugned order, it has been recorded that the opportunity of personal hearing was granted on 20.03.2023, 31.03.2023 and 12.04.2023 but the appellant had neither appeared for hearing nor asked for any extension. The adjudicating authority had, thereafter, decided the case *ex-parte*.



9.1 I find it relevant to refer Section 33A (1) of the Central Excise Act, 1944, (made applicable to Service Tax vide Section 83 of the Finance Act, 1994) wherein it is categorically mentioned that 'the adjudicating authority shall give an opportunity of being heard. In terms of sub-section (2) of Section 33A, the adjudicating authority may adjourn the case, if sufficient cause is shown. In terms of the proviso to Section 33A (2), no adjournment shall be granted more than three times. I find that in the instant case, three adjournments as contemplated in Section 33A of the Central Excise Act, 1944 have not been granted to the appellant. I also find it relevant to refer to the decision of the *Hon'ble High Court of Gujarat* in the case of *Regenta Overseas Pvt. Ltd. Vs. UOI - 2017(6) GSTL 15 (Guj)* wherein it was held that:

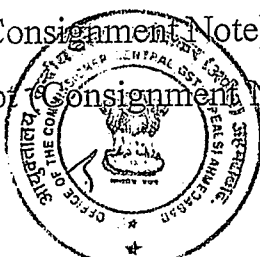
*12. Another aspect of the matter is that by the notice for personal hearing three dates have been fixed and absence of the petitioners on those three dates appears to have been considered as grant of three adjournments as contemplated under the proviso to sub-section (2) of Section 33A of the Act. In this regard it may be noted that sub-section (2) of Section 33A of the Act provides for grant of not more than three adjournments, which would envisage four dates of personal hearing and not three dates, as mentioned in the notice for personal hearing. Therefore, even if by virtue of the dates stated in the notice for personal hearing it were assumed that adjournments were granted, it would amount to grant of two adjournments and not three adjournments, as grant of three adjournments would mean, in all four dates of personal hearing."*

Examining the facts of the instant case with the legal provisions and the decision of the Hon'ble High Court, I find that the impugned order has been passed in violation of principles of natural justice as well as in clear violation of the decision of the Hon'ble High Court of Gujarat and is therefore legally unsustainable and liable to set aside on this ground alone.

10. Regarding the merits of the case, I find that the appellant have contended that during the period F.Y. 2016-17 they were engaged in providing two types of services, as detailed below :

(i) Construction of Road services in capacity of sub-contractor to the main contractor who was awarded the work by the PATAN NAGARPALIKA vide Work Order No. 17/2016-17 dated 29.04.2016 issued by the PATAN NAGARPALIKA for allocation of work under GUDC grant, for estimated amount of Rs. 60,08,580/-.

(ii) Transportation of sand (balu) and ballast stone (gitti) within city limits and in the business of transportation of sand (balu) and ballast stone (gitti), it is neither required nor customary to issue Lorry Receipt (Consignment Note), and accordingly the Appellant have not issued any Lorry Receipt (Consignment Note). I find force



in the above argument of the appellant as the claims are supported with documents and stands justified.

10.1 In respect of the services of Construction of Road service to PATAN NAGARPALIKA, I find that the appellant have provided the services as a sub-contractor to the main contractor Shri. Mukeshbhai Salvi. The main contractor vide agreement dated 05.05.2016 have sub-contracted the Contract for construction of Roads on behalf of Patan Nagarpalika, Patan and the amount of Contract is Rs. 60,08,580/-. As claimed by the appellant, the above service stands exempted from Service Tax in terms of Sr.No. 13(a) and 29(h) of Notification No. 25/2012-ST dated 20.06.2012. Relevant portion of the notification is reproduced below :

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

*New Delhi, the 20 th 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;*

*...*

*13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-*

*(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;*

*...*

*29. Services by the following persons in respective capacities -*

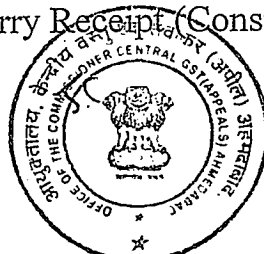
*...*

*(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;*

*...*

10.2 Examining the above legal provisions with the facts of the case I find merit in the contentions of the appellant and find that the services of Construction of Road services in capacity of sub-contractor to PATAN NAGARPALIKA through the main contractor for estimated amount of Rs. 56,50,343/- merits exemption from Service Tax in terms of Sr. No. 13(a) and Sr.No. 29(h) of Notification No. 25/2012-ST dated 20.06.2012.

11. Further, regarding the services of Transportation of sand (balu) and ballast stone (gitti) within city limits without issuing Lorry Receipt (Consignment Note), I



find from the documents produced by the appellant that they were engaged in local transportation of construction material like sand and gravel by road and were not issuing any consignment note for the same. Hence, these services cannot be considered as 'Goods Transport agency Service'. Further, as claimed by the appellant these services merit exemption from Service Tax in terms of Section 66D of the Finance Act, 1994. The relevant portion of the Section is reproduced as below:

*Section 66D: The negative list shall comprise of the following services, namely:*

- ...
- (p) services by way of transportation of goods  
 (i) by road except the services of  
 (A) a goods transportation agency; or  
 (B) a courier agency;

11.1 Examining the above provisions with the facts of the case I find merit in the contentions of the appellant that the services provided by the appellant by way of transportation of sand (balu) and ballast stone (gitti) within city limits and in the business of transportation of sand (balu) and ballast stone (gitti) without issuing any consignment note, merits exemption from levability of Service tax in terms of Section 66D (p)(i) of the Finance Act, 1994.

12. In view of the above discussions I am of the considered view that the demand of service tax amounting to Rs. 15,50,973.3/- calculated on the differential taxable value of Rs. 1,03,39,822/- for the period F.Y. 2016-17 confirmed vide the impugned order is unsustainable legally as well as on merits and is therefore set aside. As the demand of Service Tax fails to sustain the interest and penalty also fall. The appeal filed by the appellant is allowed.

13. 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.

*G.C.J.*

ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: 25<sup>th</sup> Oct, 2023

सत्यापित / Attested :

*[Signature]*

Superintendent (Appeals)  
 CGST Appeals, Ahmedabad



By REGD/SPEED POST A/D

To,  
M/s Mohammadhusen Attahusen Faruki,  
Pachwada, Bukdi,  
Patan-384265

Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad
2. The Commissioner, CGST and Central Excise, Gandhinagar
3. The Deputy/Asstt. Commissioner, Central GST, Division-Palanpur,  
Gandhinagar Commissionerate
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication  
of OIA on website
- ✓ 5. Guard file
6. PA File

