



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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(क)	फाइल संख्या / File No.	GAPPL/COM/STD/185/2022-APPEAL / 742-46
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-012/2023-24 and 24.04.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	25.04.2023
(ङ)	Arising out of Order-In-Original No. KLL DIV/ST/PARAS MANI TRIPATHI/118/2021-22 dated 27.04.2022 passed by the Deputy Commissioner, CGST & CE, Division-Kalol, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Office of the Assistant/Deputy Commissioner, CGST & CE, Division-Kalol, Gandhinagar Commissionerate, 2nd Floor, Janta Super Market, Kalol, Gandhinagar-382715
(छ)	प्रतिवादी का नाम और पता / Name and Address of the Respondent	M/s Het Construction (PAN-AAGFH6228M), 11/Green City Part 1, Panchwati Area, Kalol, Gandhinagar, Gujarat-382721

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.

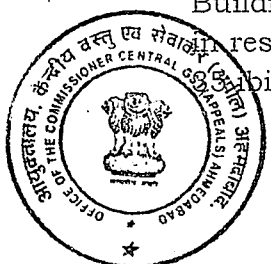
भारत सरकार का पुनरीक्षण आवेदन:-

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-

Probid :-



(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 / 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 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 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 अपीलों 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

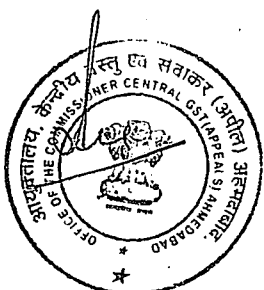
The Assistant Commissioner, CGST, Division-Kalol, Commissionerate - Gandhinagar (hereinafter referred to as the "*Department*"), in pursuance of the Review Order No. 07/2022-23, dated 01.08.2022, issued from F.No. GEXCOM/REV/ST/OIO/12295/2022-REV- O/o COMMR-GST-GANDHINAGAR, by the Commissioner, CGST & Central Excise, Gandhinagar, has filed the present appeal under Section 84 of the Finance Act, 1994 against the Order-In-Original No. KLL DIV/ST/PARAS MANI TRIPATHI/118/2021-22, dated 27.04.2022 (hereinafter referred to as the "*impugned order*") passed by the Deputy Commissioner, Central GST, Division - Kalol, Commissionerate - Gandhinagar (hereinafter referred to as the "*adjudicating authority*") in the matter of M/s. Het Construction, 11, Green City Part-1, Panchwati Area, Kalol, Distt. Gandhinagar (hereinafter referred to as the "*respondent*").

2. Briefly stated, the facts of the case are that the respondent were engaged in providing services falling under the category of Contractors [Civil Contractors] and holding Service Tax Registration No. AAGFH6228MSD001. Based on the information received from the Income Tax Department and corresponding discrepancies observed in the income declared in the Income Tax Return vis-a-vis the value declared in the ST-3 Returns for the F.Y. 2015-16 of the respondent, a Show Cause Notice was issued vide F.No. GENCOM/SCN/ST/1126/2020-CGST-DIV-KLL-COMMRTE-GANDHINAGAR, dated 20.10.2020 by the adjudicating authority, wherein it was proposed to:-

- i) Demand and recover Service Tax amount of Rs. 40,72,591/- under proviso to sub-section (1) of Section 73 of Finance Act, 1994 read with Section 68 of Finance Act, 1994 alongwith interest under Section 75 of Finance Act, 1994;
- ii) Impose penalty under Section 70, 78 of Finance Act, 1994.

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

- (a) demand of Service Tax amount of Rs. 40,72,591/- was dropped by extending the benefit of RCM provided vide Part-II of Table Sr. No. 8 of Notification No. 7/2015-ST dated 01.03.2015 on service value of Rs. 2,48,18,467/- considering the services provided by them as "Manpower supply services" to body corporate, and
- (b) demand of Rs. 28,502/- towards Swachha Bharat Cess was confirmed under proviso to sub-section (1) of Section 73 of the Finance Act, 1994 r/w Section



68 of the Finance Act, 1994. Since the said amount has already been paid by them, he ordered to appropriate the same towards said demand of SB CESS;

(c) Interest was imposed to be recovered under section 75 of the Finance Act, 1994 on the said demand of Swachha Bharat Cess u/s 75 ibid. Since an amount of Rs. 31,352/- has already been paid by them, he ordered to appropriate the same towards said demand of interest on delayed payment of SB Cess;

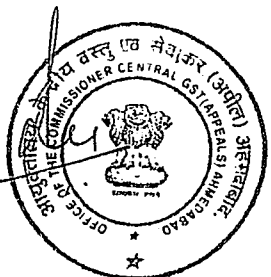
(d) benefit of reduced penalty of 25% of the SB Cess under section 78 of Finance Act, 1994 extended to the appellant. Since an amount of Rs. 7,126/- has already been paid by the appellant, the same was appropriated towards penalty.

3. Upon examination and review in terms of legality and propriety of the impugned order, the department found that the impugned order is not legal and proper. Being aggrieved with the impugned order, the department has preferred the present appeal on the grounds mentioned herein below, with a request to set aside the impugned order and to remand back the matter for issuance a fresh order after considering all aspects. Grounds of the appeal are as under:-

3.1 The adjudicating authority has erred in dropping the entire demand of Service Tax of Rs. 40,72,591/- by extending benefit of RCM provided vide Part-II of Table Sr. No. 8 of Notification No. 07/2015-ST, dated 01.03.2015 on service value of Rs. 2,48,18,467/-, by considering the services provided by them as "Manpower supply services" to body corporate along with interest and penalties proposed under said SCN.

3.2 The adjudication order must be a speaking order giving clear findings by discussing each point found in the examination/verification of the case/documents and shall incorporate cogent reasoning in case of acceptance or rebuttal of such points. In the present case, the adjudicating authority has failed in following the said fundamental responsibility entrusted upon him which adversely affected the revenue as the demand for a huge amount of Service Tax was dropped by him without examination/ verification of the case/documents.

3.3 The adjudicating authority has to take care of all the documentary evidences to arrive at the decision and he should give a detailed discussion on such evidences in the adjudication order to justify the decision taken by him on the matter. If failed in do so, such order is liable to be remitted back by the higher appellate authorities to the



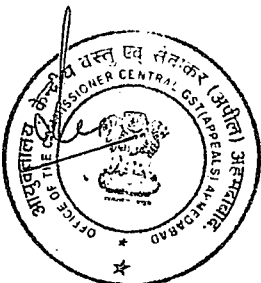
adjudicating authority for fresh decision after taking consideration of all supporting evidences/records, which should be specifically recorded in the order. The adjudicating authority has simply gone by the contention of the respondent, without making proper and justifiable verification that, they had provided the services of nature of manpower supply agency to their clients viz. (i) M/s Nidhi Infracon Pvt. Ltd. (for Rs. 2,28,00,353/-); (ii) M/s Deep Infraspace Pvt. Ltd (for Rs. 32,33,100/-) & (iii) M/s Sidhraj Infra Pvt. Ltd (for Rs. 23,85,014/-) and held that said recipients are liable to pay 100% Service Tax thereon under RCM. Thus, the order of the adjudicating authority dropping the demand of Service Tax extending the benefit of RCM as per the Notification No. 30/2012-ST dated 22.06.2012, amended vide Notification No. 07/2015-S.T., dated 01.03.2015, is required to be set aside.

3.4 The impugned order dated 27.04.2022 holding that, the services provided by the respondent is of the nature of "Manpower Supply service" to Body Corporate and thereby dropping the demand extending the benefit of 100% RCM provided vide Notification No. 30/2012-ST, dated 20.06.2012, as amended, is perverse and in the wrong perspective of the statutes.

3.5 The adjudicating authority vide letter dated 22.06.2022 informed that as per ST-3 return, the Respondent had provided service of Manpower recruitment/supply agency service, contrary to this, Para-1 of OIO as well as Para-1 of SCN observed that Respondent are having Service Tax Registration and engaged in providing service falling under the category of Contractors [Civil Contractors]. Further, said letter dated 22.06.2022 provided sample invoices and in respect of copy of works contract agreement, it was informed that, issue being very old, copy of works contract is misplaced. Therefore, respondent had provided other details like purchase order, sales ledger, profit and loss Account and Audit Report 3(CD) filed under Section 44AC of Income Tax Act, 1961.

3.6 On going through the sample Invoices dated 20.8.2014, 23.02.2017, 30.06.2017 & 19.12.2016 provided by the Respondent in respect of M/s Nidhi Infracon Pvt. Ltd., it was seen that:-

a) Particulars:- Contains work details such as - Basement Slab R.C.C. Work, Retaining Wall, Compound Wall R.C.C. MASONARY, PLASTER, P.C.C., FOOTING, RC.C. RETAINING WALL, COLUMN, SLAB, MASANARY, PILLING CASTIGN ONLY, TIE BEAM, RODA CONCRETE, SINGLE MALA PLASTER, DOUBLE MALA PLASTER, D. BUILDING, E. BUILDING, F.BUILDING etc., and



b) Amount (Rs.) :- is calculated on the basis of Measurements of work done and Rate in terms of Square Feet / Rft. /Cu ft etc.

3.7 Further, it was observed that FORM No. 3CD furnished under Section 44AB of the Income Tax Act, 1961, that at Sr. No. 10 (a) under Part-B, the Nature of Business under Sector is "Contractors" and under Sub Sector is "Civil Contractors".

3.8 From the above evidences available on records, it is clearly observed that the respondent have not provided the "Man Power Supply Service", as defined under Rule 2(1)(g) of the Service Tax Rules, 1994 .

3.9 With effect from July 1st, 2012, Section 65 (68) and Section 65(105) (k) were rescinded and new definition of 'Supply of Manpower' was inserted under Rule 2(1)(g) of the Service Tax Rules, 1994, which is reproduced herein below:

○ *"Supply of Manpower means supply of manpower, temporarily or otherwise, to another person to work under his superintendence or control."*

As per above definition, the existence of following important elements is needed to get covered under the category of manpower supply services:-

- i) Services should be manpower supply under control of principal employer.
- ii) Security services, cleaning services, piece basis services or job basis contract can be manpower supply services, only if there is superintendence or control of principal employer.

○ 3.10 It is a well-settled principle that contract executed between the parties would determine the nature of work. The respondent has not produced the copy of relevant Works Orders awarded by said clients. However, from the details of sample invoices and Form No. 3CD produced by the Respondent, as explained above, it is seen that there is no whisper of supply of manpower supply in present case. It has been specifically and categorically mentioned therein that the Respondent is a Civil Contractor, who provided construction services and the sample invoices also suggests the same. These aspects clearly makes it evident that there is neither supply of manpower services nor the evidence that manpower supply has been made and the superintendence or control of the Principal on the manpower. Hence, it becomes apparently clear that the Respondent has not provided manpower supply service but provided Construction Services through manpower engaged under its control and supervision to undertake the Civil Construction Works, as listed under particulars of said invoices in terms of Measurements and Rates to said service recipients. Hence, services provided by the Respondent are not covered



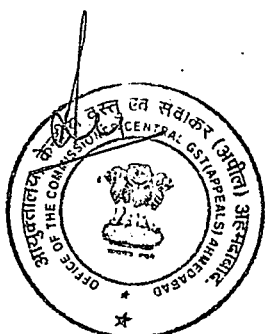
under the definition of Supply of Manpower Services and, hence, consequently, they were not eligible for any RCM benefit.

3.11 The adjudicating authority's conclusion that the services rendered by the Respondent are Manpower Supply services, is misconstrued. The impugned order dropping demand of Service Tax on said services, by holding the services rendered by Respondent under the manpower supply services is bad in law and not legal and proper. As explained above, as per the sample Invoices and FORM No. 3CD provided by the Respondent, the services rendered are of Construction Services for Civil Construction Work and not "Man Power supply services". Further, no RCM benefit is provided vide Notification No. 30/2012-ST, 20.06.2012 as amended for Construction Services.

3.12. With effect from 01.07.2012, the negative list regime came into existence under which all services are taxable and only those services that are mentioned in the negative list are exempted. As per Section 65B (44) of the Finance Act, 1994 as amended from time to time, *"service" means any activity carried out by a person for another for consideration, and includes a declared service, but.....*

Thus the Important ingredients of "service" are:-

- **Any activity-** The focus of the levy is now shifted to an activity which has a wide coverage. The word "activity" is not defined in the Finance Act, 1994 as amended from time to time. Any execution of an act or operation carried out or provision of a facility will also be included. A single activity is also covered in its ambit and it is not necessary that such activity should be carried on a regular basis. Even a passive activity or forbearance to act or to refrain from an act or to tolerate an act or a situation, would be regarded as service.
- **Carried out by a person for another-** For a transaction of service, there must be two parties, one, the service provider and the other, service receiver. By implication, self service is outside the ambit of taxable service. However, certain exceptions are provided which are explained later.
- **For a consideration** - Under the Indian Contract Act, 1872, the definition of "consideration" is, *"When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise."*



3.13 The nature of activities carried out by the Respondent as a Service Provider is covered under the definition of "Service" and found to be not covered under the Negative List as given in the Section 66D of the Finance Act, 1994, as amended from time to time. Further, said services were *neither* exempted vide any exemption notification *nor* covered under notification issued for allowing benefit of Reverse Charge Mechanism. Hence, same are taxable in the hands of Respondent only.

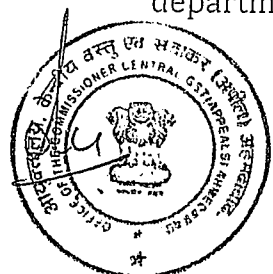
3.14 In view of the above, the adjudicating authority has grossly erred in interpreting that the services provided by the Respondent falls under the category of "Manpower supply" and, thereby, dropping demand by way of extending the RCM benefit in terms of Notification No. 30/2012-ST, dated 20.06.2012, as amended.

4. Personal Hearings in the matter were granted on 10.01.2023, 10.02.2023, 15.03.2023 & 17.04.2023. However, despite granting ample opportunities of hearing, in the interest of natural justice, *neither* respondent *nor* any authorized representative appeared to attend the hearing. The respondent has also not requested for any adjournment in the matter. Also, no one appeared from the department side. Hence, I proceed to decide the appeal on merit on the basis of submission in the ground of appeal, available records and the legal position in the matter.

5. I have gone through the facts of the case, grounds mentioned in the appeal filed by the department and the materials available on the record. The issue before me for decision is as to whether the impugned order dropping the demand of Service Tax amounting to Rs. 40,72,591/- and also interest and penalty, in the facts and circumstances of the case, is legal and proper *or* otherwise. The demand pertains to the period F.Y. 2015-16.

6. It is observed that the respondent was registered with the department for providing supply of taxable services. Based on the information received from the Income Tax Department regarding discrepancies in the income declared in the Income Tax Return vis-a-vis the value declared in the ST-3 Returns for the period F.Y. 2015-16, Show Cause Notice was issued to the respondent. The adjudicating authority had dropped the demand of Service Tax, interest and penalty vide the impugned order.

7. It is observed that while reviewing the impugned order, the department has relied upon the sample invoices of M/s Nidhi Infracon Pvt. Ltd. It is observed that the demand in the matter is pertaining to F.Y. 2015-16 whereas the Invoices relied upon by the department are of dated 20.08.2014, 23.02.2017, 30.06.2017 & 19.12.2016, which are

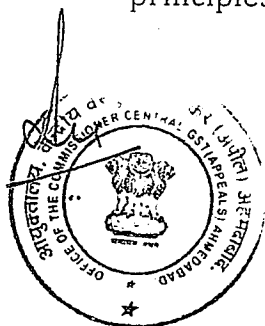


not relevant to the demand period of the matter. These documents were provided by the adjudicating authority vide letter dated 20.06.2022 to the Reviewing Authority. Hence, it appears the adjudicating authority has not categorically verified the whole set of documents / invoices of work done by the respondent during the demand period. The adjudicating authority should have ~~been~~ verified the whole set of the documents pertaining to the matter. Hence, the findings arrived by the adjudicating authority suffered from these factual inconsistencies.

7.1 I further find that department on the basis of the particulars contained the various work details mentioned in the Invoices [viz. RCC work, plaster, simple mala plaster, double mala plaster, tie beam, ... etc.], which are not relevant of the demand period, and the amount calculated on the basis of measurements of work done and rate in terms of area of work accomplished, has interpreted the nature of work as civil work and hence treated the respondent as the Civil Contractor. I find that merely mentioning of such particulars in the invoices cannot be the sole ground to deny the category of respondent as man power supplier. I find that the department has failed to categorically pointing out the classification of services of the respondent. I also don't find any concrete evidences produced by the department to prove their claim that the services being rendered by the respondent were to be classified under Works Contract Service. I find that the department has based on the Form No. 3CD of the Income Tax Act, 1961 construed that the respondent is civil contractor and not the man power supplier.

7.2 It is observed that the adjudicating authority, in the impugned order, has also not categorically defined the classification of the services being rendered by the respondent. I also find that the adjudicating authority has also failed to verify the applicability / eligibility of Reverse Charge Mechanism [RCM] in the matter as provided under Notification No. 30/2012-S.T., dated 30.06.2012, as amended. The impugned order is a non-speaking order.

8. Considering these deficiencies in the impugned order and the department appeal, the matter needs re-examination and reconciliation with the relevant documents for which the adjudicating authority is best placed to conduct necessary verification. In the circumstances, I don't have any option except to remand the matter to the adjudicating authority to re-examine the issue afresh after due verification of the whole set of documents pertaining to the matter of the demand period. Hence, in the interest of the principles of natural justice, the matter is required to be remanded back to the

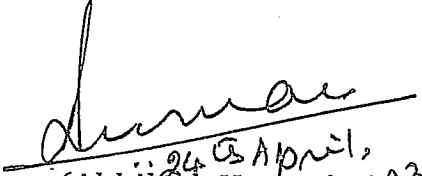


adjudicating authority for *denovo* adjudication after affording the respondent the opportunity of personal hearing.

9. In view of the above, the impugned order is set aside and the matter is remanded back to the adjudicating authority for adjudication afresh, after following principles of natural justice. Accordingly, the impugned order is set aside and the appeal of the department is allowed by way of remand.

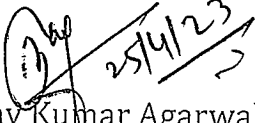
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


24 April, 2023
(Akhilesh Kumar)
Commissioner (Appeals)

Date: 24.04.2023

Attested


(Ajay Kumar Agarwal)
Assistant Commissioner [In-situ] (Appeals)
Central Tax, Ahmedabad.



BY RPAD / SPEED POST

1. The Deputy Commissioner
Central GST, Division-Kalol,
Commissionerate-Gandhinagar.

APPELLANT

2. M/s. Het Construction,
11, Green City Part-1,
Panchwati Area, Kalol,
Distt. Gandhinagar.

RESPONDENT

Copy to: -

1. The Principal Chief Commissioner, CGST & C.Ex., Ahmedabad Zone.
2. The Principal Commissioner, CGST & C.Ex., Commissionerate: Gandhinagar.
3. The Deputy/ Assistant Commissioner, CGST & C.Ex., Division-Kalol, Commissionerate: Gandhinagar.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad. (for uploading the OIA).
5. Guard File.
6. P.A. File.

