



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:- 20231264SW0000999D3B

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/2331/2023-APPEAL / 912F-83
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-143/2023-24 and 29.11.2023
(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	05.12.2023
(ङ)	Arising out of Order-In-Original No. 52/ADJ/GNR/PMT/2021-22 dated 27.03.2022 passed by the Deputy Commissioner, CGST, Division-Gandhinagar, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Jetsibhai Gangarambhai Patel, 108, 1st Floor, Goldmine Jewel, Near D-mart, Opposite GIDC Gate, K Road, Green City, Sector-26, Gandhinagar, Gujarat)

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:-

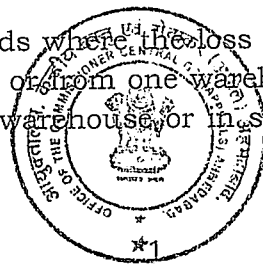
Revision application to Government of India:

(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, 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 हों।

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के 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 संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

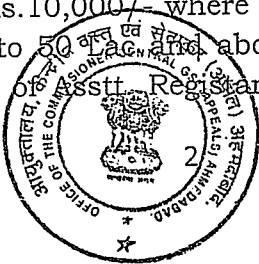
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt Registrar of a branch of any nominate public



sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

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

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति 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।

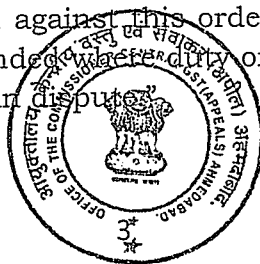
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



ORDER IN APPEAL

M/s. Jetsibhai Gagabhai Patel, 108, 1st Floor, Goldmine Jewel, Near D-mart, Opposite GIDC Gate, K- Road, Green City, Sector 26, Gandhinagar (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 52/ADJ/GNR/PMT/2021-22 dated 27.03.2022 (in short '*impugned order*') passed by the Deputy Commissioner, Central GST, Division-Gandhinagar, Gandhinagar Commissionerate (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable services and are holding Service Tax Registration No. APTPP4508GSD001.

2. The facts of the case, in brief, are that based on the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 and F.Y. 2016-17, substantial difference in income was noticed in the income declared in their ITR vis-à-vis the value reflected in the ST-3 return. As no service tax was paid on the differential income, letters were therefore, issued to the appellant to provide the details of the services provided and explain the reasons for non-payment of tax and provide the certified documentary evidences for the same. The appellant neither provided the documents nor submitted any reply justifying the non-payment of service tax on such receipts. Therefore, the service tax amounting to Rs.3,16,498/- was calculated on below arrived differential income.

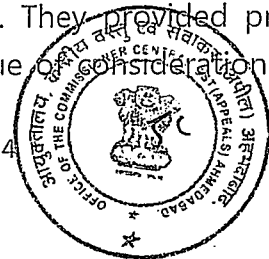
<i>F.Y.</i>	<i>Value from ITR or Value of Form 26AS</i>	<i>Value of ST-3 Return</i>	<i>Differential income</i>	<i>Service tax rate</i>	<i>Service Tax Payable</i>
2015-16	10,42,100/-	0/-	10,42,100/-	14.5%	1,51,105/-
2016-17	11,02,617/-	0/-	11,02,617/-	15%	1,65,393/-
				TOTAL	3,16,498/-

2.1 A Show Cause Notices (SCN) bearing No. GEXCOM/SCN/ST/299/2020-CGDT-DIV-GNR dated 07.09.2020 was issued to the appellant proposing recovery of service tax amount of Rs. 3,16,498/- along with interest; under Section 73(1) and Section 75 of the Finance Act, 1994. Imposition of penalties under Section 70, Section 77(2), Section 77(3), Section 76 and Section 78 of the Finance Act, 1994 were also proposed.

3. The said SCN was adjudicated vide the impugned order wherein the service tax demand of Rs. 3,16,498/- was confirmed alongwith interest. Penalty of Rs. 10,000/- each was imposed under Section 77(2) and 77(3) (c) and penalty of Rs. 3,16,498/- was also imposed under Section 78 of the Finance Act. Penalty under Section 76 was however dropped.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, on the grounds elaborated below:-

- The appellant was engaged in the business of works contract services during the financial year 2015-16 and 2016-17. They provided printing works service with material to customers. The total value of consideration shown in the income tax



return for the FY 2015-16 and FY 2016-17 is Rs. 10,42,100/- and Rs. 11,02,617/- respectively. The same has been reflected in the profit and loss accounts. The income tax return of the assessee also reflects the same fact. As per Rule 2A of valuation rules for works contract services 40% of the value of the total amount are considered as value of the services. In case, 40% of the total amount i.e. Rs. 10,42,100/- and Rs. 11,02,617/- comes to Rs. 4,16,840/- and Rs. 4,41,046/- respectively for F.Y 2015-16 and 2016-17 which is much less than the threshold amount for value of taxable service of Rs. 10,00,000/-. Hence, no service tax was payable by the appellant and consequently he has shown NIL service tax returns for the said financial years.

- The adjudicating authority issued various letters and show cause notice to the assessee based on the third party data received from income tax department. However, none of the communication was ever received by the assessee as shops of the complex were demolished by the municipal authorities. The adjudicating authority passed an order confirming demand of service tax of Rs. 3,16,498/- ex-parte. This order was also not received by the assessee due to reasons mentioned above.
- The adjudication process has been done merely based on data collected from income tax authorities and no independent inquiry has been carried out. Such order is liable to be set aside. As established by first point of grounds of appeal, the adjudicating authority has failed to make any independent inquiry and has passed order merely on the basis of data collected from income tax authorities. It is well settled that a demand cannot be confirmed merely based on details collected from income tax department. Reliance placed on the decision of the Tribunal passes in case of CCE. Jaipur-I Vs. Taha I Consulting Engineers Ltd. - 2016(44) S.T.R. 671 (Tri. Del) wherein it was held that demand of Services Tax on the basis of TDS /26AS statements/ 3CD Statements are not sustainable. Such a similar view was also taken by this Tribunal at Ahmedabad in
 - Order No. A/10270-10275/2022 dt. 17-03-2022 in Appeal No. ST/10599/2021- DB filed by M/s J.P. ISCON PVT LTD •
 - Order No. A/10804/2022 dated 15-07-2022 in Service Tax Appeal No. ST/10027/2020 filed by M/s SHRESTH LEASING & FINANCE LTD.
- As per proviso to section 73, where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of- (a) fraud; or (b) collusion; or (c) wilful mis-statement; or (d) suppression of facts; or (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax, Only then the extended period of limitation can be invoked. In case of the appellant, total amount shown under 26AS has been reflected in the income tax return filed by him and there is no fraud, collusion, wilful misstatement or suppression of facts with an intent to evade the payment of tax. Reliance placed on
 - Tamilnadu Housing Board vs CCE 1995



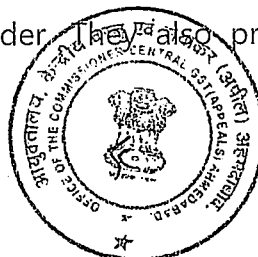
- o M/S. RAM SEWAK TIWARI VERSUS COMMISSIONER OF CUSTOMS, CENTRAL EXCISE & CENTRAL GST, JAIPUR-1- (2022 (5) TMI 483 - CESTAT NEW DELHI)
- o Nirav Industries V. Commissioner of Central Excise & Customs, Rajkot-[2009 -TMI - 202893 - CESTAT, AHMEDABAD],
- o Drugs 1989(2)SCC127 R Deivendran vs CCE (2009) 20 STT 50 (CESTAT SMB) V Ravi vs CCE (2010) 25 STT 88 (CESTAT SMB).

5. Personal hearing in the case was held on 22.09.2023. Shri Brijesh Thakar, Chartered Accountant, appeared before the then Commissioner (A) and reiterated the submissions made in appeal memorandum. He submitted that the impugned order was not received or served to them as the building was demolished. They came to know about the recovery proceedings after about one year through GST Authorities and collected the order in person from the adjudicating authority and proof of the same can be obtained from the department. He submitted that the appellant provided service regarding printing of documents; catalogue etc with materials, on work contract basis. Therefore, after allowing applicable abatement, the income from service was less than Rs. 10 lacs in both the years. Therefore, the income of the appellant from the service is exempted under Notification No.33/2012-ST. He undertook to provide sample invoices for supply alongwith ledger. He further submitted that the show cause notice issued only on the basis of the ITR data without carrying out further investigation hence the demand is not sustainable. Further, there was no collusion or suppression on part of appellant. Therefore, extended period cannot be invoked for issuing the impugned show cause notice. In view of above, he requested to set-aside the impugned order and allow the appeal.

5.1 Due to change in the appellate authority, personal hearing in the case was again held granted on 25.10.2023. However, the appellant requested that their submissions made before the earlier appellate authority may be considered and that they do not wish to avail any further hearing.

6. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the appeal memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the service tax demand of **Rs. 3,16,498/-** along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period F.Y 2015-16 and F.Y. 2016-17.

6.1 However, on going through the appeal memorandum, it is noticed that the impugned order was issued on 29.03.2022 and the present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 28.04.2023. The appellant has claimed that the impugned order was received on 04.03.2023 personally after receiving a call from CGST officials regarding tax recovery. They claimed that the premises located in Sector-24, Gandhinagar having mention in the impugned order was demolished by Gandhinagar Municipality and therefore the appellant commenced their business from new address. Hence, they could not receive the impugned order. They also provided a photo of demolished building as documentary evidence.



6.2 To verify the appellant's claim, letters were issued on 26.06.2022 and 12.10.2023 to jurisdiction Assistant Commissioner to confirm the acknowledgment of the impugned order. The Superintendent vide e-mail dated 17.10.2023, informed that the impugned order was dispatched on 19.04.2022. From the reply of Superintendent, it is not forthcoming whether the order was received by the appellant or otherwise.

6.3 Section 85 of the Finance Act, 1994, provides that the appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Act, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Relevant text of Section 85 is reproduced below:

SECTION 85. Appeals to the [Commissioner] of Central Excise (Appeals). — [(1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the ⁵[Principal Commissioner of Central Excise or Commissioner of Central Excise] may appeal to the Commissioner of Central Excise (Appeals).]

(2) Every appeal.....in the prescribed manner.

(3) An appeal shall be presented within three months from the date of receipt of the decision or order of [such adjudicating authority], relating to service tax, interest or penalty under this Chapter [made before the date on which the Finance Bill, 2012, receives the assent of the President]:

Provided that the [Commissioner] of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months.

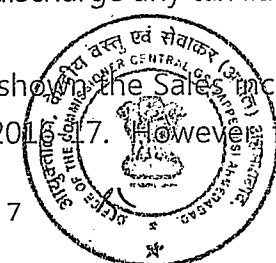
[(3A) An appeal shall be presented within **two months** from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter :

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.]

6.4 Further, in terms of Section 85, the limitation period of two months for filing the appeal in the present case shall start from date of communication. As the department could not provide the actual date of acknowledgment, I consider the date of acknowledgement (04.03.2023) claimed by the appellant to be true. As the present appeal was filed on 28.04.2023, I find that the appeal has been filed well within the prescribed time limit. In view of the above discussion and I proceed to decide the appeal on merits.

7. On merits, the appellant is contending that they provided printing services with material to their clients and in terms of Rule 2A of the Service Tax Valuation Rules, for work contract they are liable to pay service tax on 40% of the total value. They claim that their gross value in the F.Y.2015-16 was Rs.10,42,100/- and Rs.11,02,617/- in the F.Y. 2016-17. After deducting the abated value the gross income shall come to Rs.4,16,840/- and Rs.4,41,046/- for the F.Y. 2015-16 & F.Y. 2016-17 respectively, which is less than the threshold limit hence they are not liable to discharge any tax liability.

7.1 It is observed that the appellant has shown the Sales income of Rs.10,42,100/- and Rs.11,02,617/- in the F.Y. 2015-16 and F.Y. 2016-17. However, they failed to produce any



invoices or contracts to justify their claim that they were rendering printing service alongwith material.

7.2 In terms of Rule 2A (ii) (A) of the SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006;

"2A- Determination of value of service portion in the execution of a works contract - Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely :-

(i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract.

Explanation. - For the purposes of this clause, -

XXX

(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely :-

(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent of the total amount charged for the works contract;

(B) in case of works contract, not covered under sub-clause (A), including works contract entered into for, -

(i) maintenance or repair or reconditioning or restoration or servicing of any goods, or

(ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property, service tax shall be payable on seventy per cent of the total amount charged for the works contract;

(C) in case of other works contracts, not covered under sub-clauses (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property, service tax shall be payable on sixty per cent of the total amount charged for the works contract;

Explanation 1. - For the purposes of this rule, -

(a) "original works" means -

(i) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;"

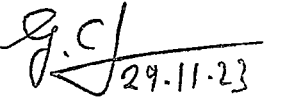
As the services claimed to have rendered by the appellant does not fall under the definition of 'original work'. I find that their contention to pay tax only of 40% of the value is legally not sustainable.



8. Further, I find that the appellant did not submit the invoices, financial records before the adjudicating authority to examine the abatement claimed by the appellant. Therefore, in the interest of natural justice, I remand back the matter to the adjudicating authority to decide the case afresh by following the principle of natural justice and pass a speaking order considering the submissions of appellant. The appellant is also directed to submit all relevant documents like Balance Sheet, Profit & Loss Account, Invoices, Contracts directly to the adjudicating authority to justify their claim that the services rendered by them includes supply of material and falls under works contract.

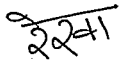
9. Accordingly, I set-aside the impugned order and remand the matter back to adjudicating authority for deciding the SCN afresh specifically dealing with the contentions raised in the written submissions made by the appellant vis-à-vis the documentary evidences.

10. 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.


(ज्ञानचंद जैन)
आयुक्त (अपील्स)

Date: 29.11.2023

Attested



(रेखा नायर)

अधीक्षक (अपील्स)

केंद्रीय जीटी.एस., अहमदाबाद



By RPAD/SPEED POST

To,

M/s. Jetsibhai Gagabhai Patel,
108, 1st Floor, Goldmine Jewel,
Near D-mart, Opposite GIDC Gate,
K- Road, Green City, Sector 26,
Gandhinagar.

Appellant

The Assistant Commissioner
CGST, Division- Gandhinagar,
Gandhinagar

Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (System), CGST, Appeals, Ahmedabad.
(For uploading the OIA)
4. ~~Guard File.~~



