



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

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(क)	फाइल संख्या / File No.	GAPPL/COM/STP/1139/2022-APPEAL / 1162-66
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-017/2023-24 and 28.04.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	09.05.2023
(ङ)	Arising out of Order-In-Original No. 27/AC/DEM/MEH/ST/Yash Corporation/2021-22 dated 25.03.2022 passed by the Assistant Commissioner, CGST, Division-Mehsana, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Yash Corporation, B-2, Balkrishna Shopping Centre, ST Workshop Road, Mehsana Industrial Estate, Mehsana, Gujarat-384002

कोई व्यक्ति इस अपील-आदेश से असंतोश अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way.

भारत सरकार का पुनरीक्षण आवेदन:-

Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की 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 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 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-8 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 ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

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

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

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

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

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

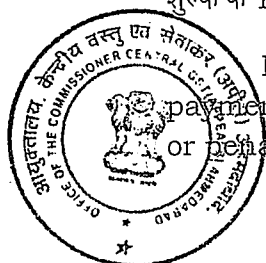
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

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

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

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

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

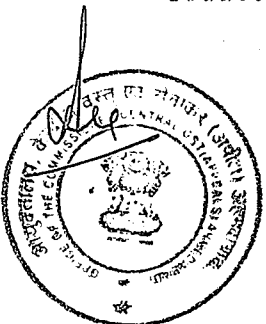


अपीलिय आदेश / ORDER-IN-APPEAL

This order arises out of an appeal filed by M/s. Yash Corporation, 2/B, Balkrishna Shopping Centre, Opp. S.T.Workshop, Mehsana-384002 (hereinafter referred to as the “appellant”) against Order-in-Original No. 27/AC/DEM/Meh/ST/Yash Corporation/2021-22 dated 01/04/2022 (hereinafter referred to as the “impugned order”) passed by the Assistant Commissioner CGST, Mehsana Division, Gandhinagar Commissionerate (hereinafter referred to as the “adjudicating authority”).

2. The facts of the case, in brief, are that the appellant are engaged in providing services of installation of electrical/light equipments like high mast lighting pole, D.G. Sets, laying cables etc. against work orders received from their various clients and holding Service Tax Registration No. AGWPP5734AST001 under the category of “Maintenance or Repair Service”. However, the Department considered that the activities carried out by the appellant actually merited classification under the category of “Works Contract Service” as per Section 65 (105) (zzzza) of the Finance Act, 1994 and are taxable in terms of Section 66B of the Finance Act, 1994 (FA,1994). Accordingly, a Show Cause Notice (in short “SCN”) F.No. V.ST/15-81/OFF/OA/2012 dated 19.10.2012 was issued by the Commissioner, erstwhile Central Excise, Ahmedabad-III for the period F.Y. 2007-08 to F.Y. 2011-12 demanding, inter-alia, service tax amounting to Rs. 56,20,552/-

2.1 For the subsequent period from F.Y. 2012-13 to F.Y. 2016-17, the appellant were issued SCN No. V.ST/11A-34/Yash/17-18 dated 28.03.2018 by the Assistant Commissioner, CGST Mehsana Division, Gandhinagar Commissionerate. This SCN was adjudicated vide Order in Original No. 14/AC/ST/MEH/18-19 dated 30.03.2019 (in short OIO) vide which the taxable value for calculation of Service Tax was considered as Rs. 9,49,65,369/- for the period F.Y. 2012-13 to F.Y. 2016-17; benefit of exemption under Notification No. 25/2012-ST dated 20.06.2012 and/or Notification No. 30/2012-ST dated 01.07.2012 were denied; demand of Service Tax amounting to Rs. 32,05,501/- was confirmed alongwith interest; penalty of Rs. 10,000/- was imposed under Section 77 of FA, 1994 and penalty of Rs. 32,05,501/- was imposed under Section 78 of FA, 1994 with option for reduced penalty under proviso to clause (ii).



3. Aggrieved by the said order, the appellant had filed appeal before the Commissioner (Appeals), Central Tax, Ahmedabad, who decided the case vide Order in Appeal (OIA) No. AHM-EXCUS-003-APP-63-19-20 dated 16.03.2020 wherein, it was ordered that :

...

5(ii). It is observed from the impugned order that the appellant had not submitted any defence reply before the adjudicating authority. Besides that, they had not appeared for personal hearing on any of the given dates. Hence, the impugned order has been passed ex-parte.

5(iii). It is further observed that the demand has been confirmed in absence of the documents required for consideration of exemption/abatement in view of Notfn. No.25/2012-ST and 30/2012-ST. The facts on record also reveal that the documents submitted before this authority were never submitted before the adjudicating authority and therefore there was no scope for the adjudicating authority to consider the same for ascertaining the service tax liability. Besides that, the order had been passed without giving opportunities for natural justice. Looking to the totality of the facts, it would be prudent that the matter may be remanded back to the adjudicating authority so as to enable the appellant to submit the documents in support of their claim before the adjudicating authority and adjudicating authority should consider the same for ascertaining the demand and also verify the applicability of the Notifications in case of the appellant. The adjudicating authority is also directed to pass the order afresh after considering the contentions raised by the appellant in the matter.

6. In view of above, the matter is remanded back to the adjudicating authority for a fresh order in terms of direction contained here-in-above. Appellant is directed to produce/submit all the documents required by the adjudicating authority for consideration of their claim. Adjudicating Authority is directed to consider the documents to be produced/submitted by the appellant and pass the order afresh after following the principal of natural justice.

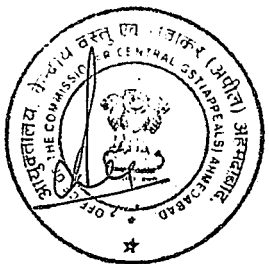
4. In the remand proceedings, the case was adjudicated vide the impugned order wherein :

- the demand of Service Tax amounting to Rs. 32,05,501/- for the period F.Y. 2012-13 to F.Y. 2016-17 was confirmed under Section 73(2) alongwith interest under Section 75 of the Finance Act, 1994 for providing 'Works Contract Service' for the taxable value of Rs. 9,49,65,369/- ;
- penalty of Rs. 10,000/- was imposed under Section 77 of the Finance Act, 1994 ; penalty of Rs. 32,05,501/- was imposed under Section 78 of the Finance Act, 1994 with an option of reduced penalty under clause (ii) of Section 78(1) of the Finance Act, 1994 .



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

- (i) Second/periodical SCN cannot be issued invoking extended period of limitation of demand and, therefore, the demand is not tenable, Master Circular No.1053/02/2017-CX dated 10.03.2017 has been relied upon.
- (ii) They had carried out laying of electrical cables in the villages of various Nagarpalikas, Gram Panchayats etc. The activities carried out by them are falling under the category of 'Works Contract Service'; that they carried out works for Government body/authority or Local Authority in majority of cases and for a few body corporate agencies and other customers; that service provided to Nagarpalikas and Gram Panchayat are exempted in terms of Sr.No. 12/12(a) of the Notification No. 25/2012-ST;
- (iii) The appellant is an individual and had provided services to Body Corporates and, therefore, by virtue of Notification No. 30/2012-ST dated 20.06.2012, their service tax liability is covered under the Reverse Charge Mechanism.
- (iv) VAT is already paid by the appellant and, therefore valuation should have been done as per Rule 2A(1) of the Valuation Rules, 2006.
- (v) Audit of the records of the appellant was carried out and objections raised vide the SCN were not covered by the objections raised by audit.
- (vi) Wrong classification does not tantamount to suppression of facts.
- (vii) They are eligible for cum-duty benefit.
- (viii) As ST-3 returns were filed regularly, extended period is not applicable.
- (ix) In support of their contentions, they relied the following citations :
 - Hon'ble Supreme Court in the case of Hindustan Steel Limited Vs State of Orissa – 1978 (2) ELT J 159 (SC);
 - Hon'ble High Court of Madras in the case of CCE, Tiruchirapalli Vs Shri Suthan Promoters – 2010 – TIOL-623-HC-MAD-ST;
 - Hon'ble High Court of Delhi in case of Delhi Transport Corporation Vs Commissioner of Service Tax - 2015-TIOL-961-HC-DEL-ST;



- Hon'ble Supreme Court of India in case of Continental Foundation Jt. Venture Vs CCE, Chandigarh-I – 2007 (216) ELT 177 (SC);
- Hon'ble Supreme Court in the case of UOI Vs Rajasthan Spinning and Weaving Mills reported as 2009 (238) ELT 3(SC);
- CESTAT, Bangalore in the case of Microfinish Valves Pvt.Limited – 2019(2) TMI 877.
- Balaji Manpower service reported at 2019 (31) GSTL 418 (P&H);
- M/s Honda Cars India Ltd reported at 2018 (3) TMI 257 (Cestat, New Delhi).
- Hon'ble CESTAT, New Delhi in the case of M/s Gannon Dunkerley & Co. Ltd [2020 (12) TMI 1096]
- Hon'ble CESTAT, Ahmedabad in the case of Patel Labour Contractor P.Ltd – 2021 (4) TMI 811.
- Hon'ble CESTAT, Chennai in the case of M/s Vodafone Cellular Limited reported at 2021 (10) TMI 186.
- Hon'ble CESTAT, Ahmedabad in the case of Span Commercial Co. Vs CCE, Ahmedabad-I, Final Order dated 14.01.2020.
- Hon'ble CESTAT, Bangalore in case of M/s Rolex Logistics Pvt.Ltd – 2009-2013-STR-147-(Tri.Bang.).
- Hon'ble CESTAT, New Delhi in the case of M/s Oriental Insurance Company Limited – 2021 (5) TMI 869.

6. Personal Hearing was held on 09.01.2023. Shri Bishan R. Shah, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in Appeal Memorandum.

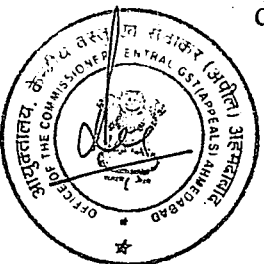
6.1 As the appellant had not submitted documents in support of their contentions alongwith their appeal memorandum, another opportunity for hearing was granted on 10.02.2023. Ms Labdhi Shah, Chartered Accountant, and Ms Trishla Sheth, Advocate, appeared on behalf of the appellant. They requested for adjournment.

6.2 Subsequently, the next date of hearing was granted on 22.02.2023. Shri Bishan R. Shah, Chartered Accountant, appeared on behalf of the appellant. He submitted copies of Form-26AS for the relevant period, a copy of FAR No. 1212/2018-19 dated 26.02.2019, and stated that the assessment has been finalized by audit. He further stated that he would submit an additional written submission.



6.3. Thereafter, additional written submission was filed by the appellant on 07.03.2023 vide which they submitted that :

- They are engaged in the business of electrical installation service or electric cable laying service to various government and non-government organizations. Majority of the services are rendered to State Government and Public Sector Undertakings like Idar Nagarpalika, Mehsana Gram Panchayat etc.
- Their activities are exempted vide Sr. No. 12A of Notification No. 25/2012-ST, dated 20.06.2012, and the term local authority was defined in clause 31 of Section 65B of the Finance Act, 1994. They have provided services to local authority as per Section 65B(31) of the Finance Act, 1994.
- During the period F.Y. 2012-13, they have provided exempted services amounting to Rs. 20,73,225/-, out of which an amount of Rs. 15,65,225/- was reflected in the Form-26AS and remaining amounts are exempted as per Sr. No. 12(A) of Notification No. 25/2012-ST dated 20.06.2012 and the total amount merits exemption for the F.Y.
- Being a Proprietorship firm, the services rendered by them to Body Corporates were eligible for the benefit of partial Reverse Charge Mechanism in terms of clause 1(v) of Notification No. 30/2012-ST dated 20.06.2012, as amended, being classified as 'service portion in execution of works contract'. As per their books of accounts, during the period F.Y. 2012-13, they have provided services amounting to Rs. 1,39,42,894/- to Body Corporates i.e M/s Bhavnagar Energy Company Limited, M/s Bssc Infrastructure Pvt. Ltd and ONGC Ltd. The said amount is also reflected in their Form-26AS. Therefore, they are eligible for exemption amounting to Rs. 69,71,447/- (50% of Rs. 1,39,42,894/-), which should be deducted from their total demand for the said period.
- During the F.Y. 2012-13, they have discharged service tax liability amounting to Rs. 3,62,318/- on a taxable value of Rs. 29,31,371/-. However, the SCN shows the taxable value as per ST-3 Return as 'zero', which is incorrect and an amount of Rs. 29,31,371/- is required to be deducted from their total demand.



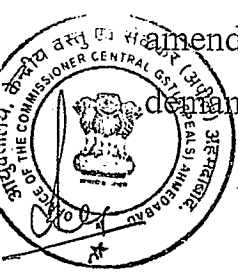
7. I have carefully gone through the facts of the case, submissions made by the appellant in the Appeal Memorandum, during the personal hearing as well as in their additional submission. I find that the issue to be decided in the instant appeal is whether the Service Tax amounting to Rs. 32,05,501/- confirmed vide the impugned order alongwith 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. 2012-13 to F.Y. 2016-17.

8. It is observed that the appellant are a Proprietorship firm registered with the Service Tax department and providing services by classifying them under 'Maintenance or Repair Service' and/or 'Works Contract Service' during the relevant period. However, department had considered their services under 'Works Contract Service' and a demand was issued to them for the period F.Y. 2007-08 to F.Y. 2011-12 as detailed in the SCN. For the subsequent period F.Y. 2012-13 to F.Y. 2016-2017, the periodical demand was issued on 28.03.2018 proposing to demand and recover an amount of Rs. 32,05,501/- as service tax alongwith interest and penalties. The SCN was issued under Section 73(1A) of the Finance Act, 1994. Further, the demand was confirmed vide the impugned order under Section 73(2) of the Finance Act, 1994 invoking the extended period of limitation alongwith interest and penalties.

8.1 For examining the matter in proper perspective, it would be relevant to refer to Section 73(1A) of the F.A., 1994 reads as under :

(1A) Notwithstanding anything contained in sub-section (1) except the period of thirty months of serving the notice for recovery of service tax), the Central Excise Officer may serve, subsequent to any notice or notices served under that sub-section, a statement, containing the details of service tax not levied or paid or short levied or short paid or erroneously refunded for the subsequent period, on the person chargeable to service tax, then, service of such statement shall be deemed to be service of notice on such person, subject to the condition that the grounds relied upon for the subsequent period are same as are mentioned in the earlier notices.

Plain reading of the above legal provisions clearly bring out the fact that the statements/notices issued under this sub-section do not cover the extended period of 05 years (as applicable). In view of the above, it is apparent that in respect of show cause notices issued under Section 73 (1A) of the Finance Act, 1994 (as amended), extended period of limitation can not be invoked. Therefore, the demand raised and confirmed against the appellant vide the impugned order by



invoking extended period of limitation is legally unsustainable, as the SCN has been issued under Section 73(1A) of the Finance Act, 1994.

8.2 It is further observed that the impugned order was passed in remand proceedings in pursuance of the OIA No. AHM-EXCUS-003-APP-63-19-20 dated 16.03.2020 passed by the Commissioner (Appeals) Central GST, Ahmedabad. It is also observed that the adjudicating authority has recorded at Para 11 of the impugned order that the appellants have appeared for Personal hearing on virtual mode and sought one-week time to submit their defence reply. However, the adjudicating authority did not provide another opportunity for personal hearing to the appellant, as required in terms of proviso to sub-section (2) of Section 33A of the Central Excise Act, 1944 made applicable to Service Tax matters by virtue of Section 83 of the Finance Act, 1994. In this regard it is observed that, the Hon'ble High Court of Gujarat in the case of *REGENT OVERSEAS PVT. LTD. Vs UNION OF INDIA* reported as 2017 (6) G.S.T.L. 15 (Guj.) has ruled that :

...
12. ... 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
...

In view of the legal provisions under Section 33A(2) of the Central Excise Act, 1944 and the judicial pronouncements of the Hon'ble High Court of Gujarat, it is clear that the impugned order has been issued in violation of the principles of natural justice in as much as three opportunities of personal hearing have not been granted. The impugned order is liable to be set aside on this ground as well.

9. I find that in the instant case, the Show Cause Notice dated 28.03.2018 was issued for the period from F.Y. 2012-13 to F.Y. 2016-17. The SCN also mentions that the appellant had filed their ST-3 returns for the period F.Y. 2012-13 to F.Y. 2016-17. From the ST-3 returns filed by the appellant, it is observed that they have claimed exemption and abatement under relevant provisions of the Finance Act, 1994 as applicable from time to time. The appellant have contended that during the period F.Y. 2012-13, they have provided total value of services amounting to Rs. 1,39,42,894/- to Body Corporates like M/s Bhavnagar Energy Company Limited, BSEC Infrastructure Private Limited, ONGC Ltd. and also provided documents



confirming the said facts. Upon co-relating the above claim of the appellants to the Form-26AS of the relevant period, it is found that during the period F.Y. 2012-13, following amounts are credited by the above four body corporate :

Name of Body Corportate	Amount credited under Section 194C of the Income Tax Act,1961
Bhavnagar Energy Co.Ltd	Rs. 28,78,250
BSCC Infrastructure Pvt.Ltd	Rs. 21,71,715
ONGC	Rs. 88,68,013
ONGC	Rs. 24,916
TOTAL	Rs. 1,39,42,894/-

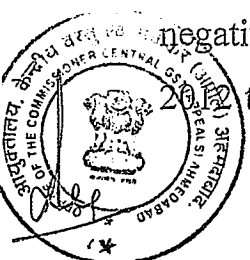
Therefore, I find merit in the claim of the appellants regarding providing the above services to body corporate and therefore they are eligible for benefit of partial Reverse Charge Mechanism in terms of Sr. No. 9 of Notification No. 30/2012-ST dated 20.06.2012, as amended.

10. It is further observed that during the period F.Y. 2012-13, the appellants have filed three ST-3 Returns. The filing of the returns and details therein are tabulated as per table below:

Sr. No	Period of ST-3 Return- F.Y. 2012-13	Date of Filing	Classification of Service in the Return	Taxable Value (in Rs.)	Abatement/ Exemption claimed / availed (in Rs.)	Service Tax paid (in Rs.)
1	April - June	12.02.2013	Erection, Commissioning & Installation (ECI)	17,05,889/-	11,42,946/-	69,580/-
2	July - Sep.	05.04.2013	- Do -	23,41,313/-	11,70,657/- & 7,02,394/-	57,877/-
3	Oct. - Mar.	24.02.2014	Works Contract Service (WCS)	1,14,14,142/-	6663730/- & 28,50,246/-	2,34,861/-

10.1 It is apparent that the appellant had filed the ST-3 Returns for the F.Y. 2012-13 and declared a taxable value of Rs. 1,54,61,344/- in three returns filed by them. They have discharged an amount of Rs. 3,62,588/- during the said period as service tax. However, the Annexure-B to the SCN quantifying the demand for the F.Y. 2012-13 mentions taxable value as NIL. Hence, the demand for the F.Y. 2012-13 been wrongly quantified.

10.2 It is further observed that the first quarter of F.Y. 2012-13 falls in the period prior to negative list regime. The period from July, 2012 to April, 2013 falls in the negative list based service tax regime. For the period April-June, 2012 and July, 2012 to September, 2012, the appellant have classified services provided by them



under Erection, Commissioning and Installation Service and claimed benefit of exemption Notification No. 1/2006-ST, Serial No. 5. For the period October, 2012 to March, 2013, they have classified their services under Works Contract Service and claimed benefit of Exemption Notification No. 30/2012-ST (Serial No.9) and Notification No. 25/2012-ST [Serial No.12(a)]. I find that neither the SCN nor the impugned order has challenged the assessment made by the appellant. Hence, I am of the considered view that the demand for F.Y. 2012-13 invoking extended period of limitation is not legally sustainable and liable to be set aside.

11. It is further observed that the first SCN was issued to the appellant on 19.10.2012 for the period F.Y. 2007-08 to F.Y. 2011-12. The second SCN dated 28.03.2018 was issued for the period F.Y. 2012-13 to F.Y. 2016-17, invoking extended period of limitation. During the F.Y. 2012-13, the ST-3 Return for the quarter April-2012 to June-2012 was filed on 12.02.2013. Hence, considering the said date as 'relevant date', the extended period of limitation of 05 Years expires on 11.02.2018. Hence, the SCN demanding the service tax for the period April-2012 to June-2012 was issued beyond the extended period of limitation of five years. Therefore, the SCN issued in the case as well as the impugned order passed for the period April, 2012 – June, 2012 is liable to be set aside being legally unsustainable.

12. Appellants have further claimed that during the period F.Y. 2012-13, they have provided services amounting to Rs. 4,46,725/- to Ider Nagarpalika and Rs. 11,18,500/- to Mahesana Municipality. Both the service receivers being Government bodies/local authorities, they have claimed exemption in terms of Sr. No. 12 (a) of Notification No. 25/2012-ST dated 20.06.2012. Their claims are supported with work orders from both the local authorities. It is further observed that in the Form-26AS for the relevant period, both the above local authorities have credited amounts in the account of the appellant as detailed below :

Credited by - (Name of Company)	Amount credited under Section 194C of the Income Tax Act, 1961 (in Rs.)
Idar Municipality	Rs. 4,46,725/-
Mahesana Municipality	Rs. 11,18,500/-
Total	Rs. 15,65,225/-

Therefore, the appellants claim stands justified and they are found eligible for exemption in terms of Sr. No. 12(a) of Notification No. 25/2012-ST dated 20.06.2012.



13. It is further observed that the appellant have produced a copy of Final Audit Report No. 1212/2018-19 (C.Ex/ST), dated 26.02.2019, issued by the Deputy Commissioner, Circle-IX, CGST- Audit, Ahmedabad. Relevant portions of the FAR is reproduced below:

...

Services : *Works Contract Service ,*

Period of Last Audit Conducted : *First Audit*

Period of Audit : *April, 2013 to June, 2017;*

Date on which Audit undertaken : *17.09.2018 and 04.01.2019*

Summary of Major Audit objections from the working papers

Revenue Para-01 (Non-payment of penalty for late filing of service tax return)

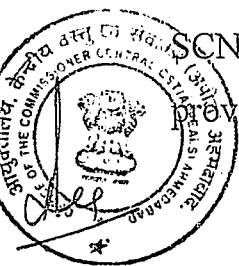
During the audit, it was observed that the assessee has delayed the filing of service tax return for the period from April-2013 to September – 2013 by 123 days and was liable for payment of penalty under section 70 of the Finance Act, 1994. However, the assessee did not pay the penalty as detailed below:

<i>ST-3 Return period</i>	<i>Due date. of filing</i>	<i>Actual date of filing</i>	<i>No of days beyond due date</i>	<i>Penalty applicable</i>
<i>April-13 to Sep, 13</i>	<i>25.10.2013</i>	<i>25.02.2014</i>	<i>123</i>	<i>Rs.10.300/-</i>

...

From the FAR, it is found that the assessment for the period F.Y. 2013-14 to F.Y. 2016-17 has been finalized by the Audit, CGST, Ahmedabad classifying the service provided by the appellant as 'Works Contract Service'. The FAR also confirms that the audit officers during the period F.Y. 2013-14 to F.Y. 2016-17 did not find any discrepancies in the availment of benefits of exemption / abatement under Notification No. 30/2012-ST dated 20.06.2012, Notification No. 25/2012-ST dated 20.06.2012 and/or Notification No. 24/2012-ST dated 20.06.2012 claimed by the appellant. Hence, the assessment for the period stands finalized. Therefore, the confirmation of demand pertaining to the period F.Y. 2013-14 to F.Y. 2016-17 in the impugned order becomes infructuous. The impugned order deserves to be set aside.

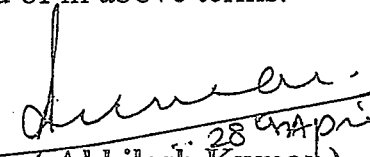
14. In view of the above discussions, I am of the considered opinion that the SCN issued under Section 73 (1A) of the Finance Act, 1994 by invoking provisions under proviso to Section 73(1) of the Finance Act, 1994 is flawed.



Further, the impugned order confirming demand under proviso clause of Section 73(1) of the Finance Act, 1994 suffers from the same legal infirmity. Moreover, the demand for the first quarter of F.Y. 2012-12 stands time barred even by invoking extended period of limitation. For the remaining period F.Y. 2013-14 to F.Y. 2016-17, the audit of the records of the appellant was done by the department and the claims of the appellant regarding availment of benefit of exemption and/or abatement was found to be in order. Hence, the impugned order is legally unsustainable and liable to be set aside.


15. In view of the discussions made hereinabove, the demand of Service Tax amounting to Rs. 32,05,501/- confirmed vide the impugned order, being unsustainable on merits as well as on limitation, is hereby set aside. As the demand fails to sustain, question of interest and penalty does not arise. The appeal filed by the appellant is allowed.

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


(Akhilesh Kumar)
Commissioner (Appeals)

Date: 28th April, 2023

Attested:


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

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3. The Deputy/Asstt. Commissioner, CGST, Division-Mehsana, Commissionerate - Gandhinagar.
4. The Deputy/Asstt. Commissioner (Systems), CGST, Appeals, Ahmedabad (for uploading)
5. Guard file,
6. PA File