



आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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DIN:- 20240164SW0000018887

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/3798/2023-APPEAL / 361-65
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-176/2023-24 and 28.12.2023
(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	03.01.2024
(ङ)	Arising out of Order-In-Original No. AC/S.R./80/ST/KADI/2022-23 dated 06.04.2023 passed by the Assistant Commissioner, CGST, Division: Kadi, Commissionerate: Gandhinagar	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Shayar Construction Co., 158/1, Opp. ONGC Colony, At- Merda, Tal-Kadi, Dist-Mehsana, 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:-

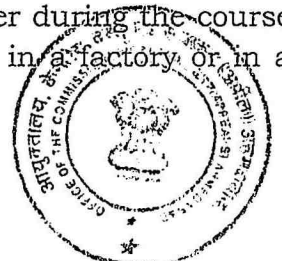
Revision application to Government of India:

(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 प्रकिया 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 मामले 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 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 रु 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

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

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

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

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

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

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

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

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

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

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



अपीलिय आदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s Shayar Construction Co., 158/1, Opp. ONGC Colony, At- Merda, Tal-Kadi, Dist-Mehsana, Gujarat (hereinafter referred to as "the appellant") against Order in Original No. AC/S.R./80/ST/KADI/2022-23 dated 06.04.2023 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner, CGST, Division Kadi, Gandhinagar Commissionerate [hereinafter referred to as "adjudicating authority"].

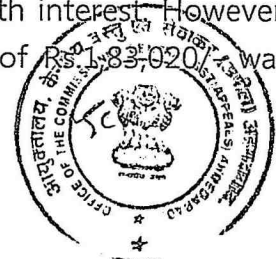
2. Briefly stated, the facts of the case is that the appellant are engaged in the business of laying of underground and over ground pipelines etc. for their clients M/s. ONGC, M/s. IOCL etc. for which they are holding Service Tax Registration No. ABEPR1777NST001 under the category of 'Construction Service other than residential complex, including Commercial/Industrial Building and Civil Structures'. On scrutiny of the ST-3 returns filed by the appellant for the period from April, 2013 to September, 2013, it was observed that they had charged Rs.1,74,20,435/- from their clients towards the taxable service provided by them under the category of 'Construction services other than Residential Complex, including Commercial/Industrial Buildings or Civil Structures' for which service tax amounting to Rs.7,10,544/- was paid by them after availing abatement of 67% of the gross service value in terms of Sr.No.1 of Notification No. 30/2012-ST dated 20.06.2012. However, the said notification does not provide for any abatement and the notification is in respect of service tax payable under reverse charge under Section 68(2) of the Finance Act, 1992. It, therefore, appeared that the appellant had short paid service tax amounting to Rs.14,42,622/- for the period from April, 2013 to September, 2013. The appellant was called upon to submit various documents viz. copies of Income Ledger, Invoice, Work Orders, Balance Sheet for the F.Y. 2013-14 but the appellant failed to submit the same.

2.1 The appellant was issued SCN No. V.ST/15-223/Dem/OA/14-15 dated 20.04.2015 demanding service tax amounting to Rs.14,42,622/- under Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. Imposition of penalty was also proposed under Section 76, 77(2) and 78 of the Finance Act, 1994.

2.2 The said SCN was adjudicated vide OIO No. Kadi/DC/D.KHATIK/31/ST/2020-21 dated 27.02.2021, wherein the demand for service tax amounting to Rs.14,42,622/- was confirmed along with interest. Penalty of Rs.14,42,622/- was imposed under Section 78 and Penalty of Rs.10,000/- each were imposed under Section 77 (1) (a) & Section 77 (2) of the Finance Act, 1994.

2.3 Being aggrieved, the appellant filed an appeal before then Commissioner (Appeal-I), Central Excise, Ahmedabad, who vide OIA No. AHM-EXCUS-003-APP-93/2021-22 dated 21.01.2022 set aside the OIO and remanded back the matter to adjudicating authority for fresh adjudication.

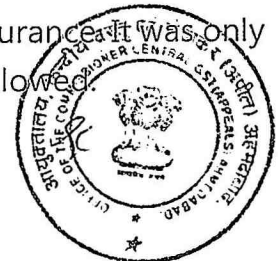
3. The matter was remanded back to adjudicating authority, who vide impugned order confirmed the service tax demand of Rs.3,66,039/- along with interest. However, the service tax demand of Rs.10,76,583/- was dropped. Penalty of Rs.1,83,020/- was



imposed under Section 76 and Penalty of Rs.10,000/- was imposed under Section and 77 (2) of the Finance Act, 1994.

4. Being aggrieved with the impugned order, the appellant has filed the instant appeal along with condonation of delay application on the following grounds:

- The appellant has been engaged in undertaking composite contracts for supply, & Construction of and for the said purpose, the appellant obtains an order from the customer, takes measurements at site, procure the construction material and other materials from the market, construct the site. For the said composite contract, a lump sum consideration is charged from the customer. This was treated as a part & parcel of new civil structure.
- The appellant has carried out the work of laying gas pipeline to M/s. ONGC Ltd, IOCL with material for which the appellant has opted to pay service tax under work contract service.
- The appellant submitted that the work contract (Composition scheme for payment of service tax) Rules, 2007 vide notification no. 32/2007 dated 22.05.2007.
- The appellant has opted composition scheme of Work Contract for paying service tax in respect of service provided to M/s. ONGC & IOCL. In compliance of the said composition scheme, the appellant has not taken Cenvat credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of Cenvat Credit Rules, 2004. The appellant is rightly eligible for the composition scheme of "Work Contract Service" and accordingly actual service tax liability would come to Rs.8,61,266/- under "Work Contract" service against the total demand of service tax amount to Rs.14,42,622/-, against which the appellant has already paid Rs.7,10,544/- for the period Apr-Sep-13 which has already been shown in ST-3 return for the period April-September-2013. So demand of service tax has been required to reduce to Rs.1,50,722/-. Demand of service tax without following the valuation rule has not been justifiable & sustainable. So the notice has rightly eligible for the benefit of composition. Regarding whether by wrong mention of abatement notification no. by its sr. no., can withdraw the benefit which is eligible to appellant or not.
- The appellant submitted that the fact that the appellant has been engaged in the business of laying of underground and over ground pipelines to M/s. ONGC. While filing ST-3 return for the period Apr-Sep-13, by clerical mistake, the appellant has mentioned abatement notification no.30/2012 vide sr. no.1 which is wrong. At sr. no. 1 of notification no.30/2012, there is exemption regarding service provided by the insurance agent carrying on insurance business. It is undisputed fact that the appellant has no such business of insurance. It was only procedural lacuna on the part of the appellant which may be allowed.



4.1 On going through the appeal memorandum, it is noticed that the impugned order was issued on 06.04.2023 and the present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 15.06.2023 i.e. after a delay of 04 days from the last date of filing appeal. The appellant have, on 21.12.2023, filed a Miscellaneous Application seeking condonation of delay stating that the appellant was out of station hence could not file the appeal within time. They, therefore, requested to condone the delay of 04 days, which is within the condonable period.

5. Personal hearing in the matter was held on 18.12.2023. Shri Vipul Khandhar, Chartered Accountant, appeared for personal hearing on behalf of the appellant. He stated that the appellant is ONGC Civil Contractor for laying pipe lines. He re-iterated the contents of the written submission and requested to allow their appeal.

6. Before taking up the issue on merits, I will first decide the Miscellaneous Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an 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. Considering the cause of delay as genuine, I condone the delay of 04 days and take up the appeal for decision on merits.

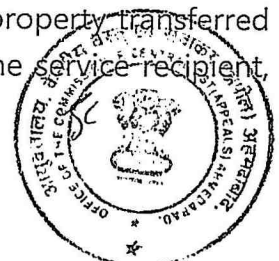
7. I have gone through the facts of the case, submissions made in the Appeal Memorandum and the submissions made at the time of personal hearing. The issue before me for decision is whether the service tax demand of Rs.3,66,039/- confirmed by the adjudicating authority in the facts and circumstances of the case is proper or otherwise. The demand pertains to the period from April, 2013 to September, 2013.

7.1 The adjudicating authority in terms of the remand directions, decided following issues;

- a) Whether the services provided by the appellant fall under 'Works Contract Service'?
- b) Whether the abatement availed by the appellant is available under Works Contract service?

7.2 The adjudicating authority observed that the appellant are engaged in laying pipelines, structures etc. to store, transport fluids, therefore the works done by them falls under the definition of works contract. The appellant has provided service to ONGC & IOCL which are body corporate as defined under Notification No.30/2012-ST dated 20.06.2012, hence, the liability for payment of service tax under reverse charge mechanism in respect of Works Contract service shall be 50% on the appellant and 50% on the service recipient.

7.3 The adjudicating authority also observed that as the goods/property transferred during execution of works contract were supplied free of cost by the service recipient.



the whole amount received by the appellant in execution of works contract was considered as value of service portion of the work executed. Therefore, the value of such goods which were supplied free of cost is not liable for deduction under Rule 2A(i)(c) of the Service Tax (Determination of Value) Rules, 2006. The appellant therefore shall be eligible for the partial reverse charge benefit and shall be liable to pay service tax on 50% of the taxable amount.

7.4 Accordingly, the adjudicating authority re-calculated the tax liability to Rs.21,53,166/- and after considering the 50% liability under reverse charge mechanism and deducting the amount of Rs.7,10,544/- already paid by the appellant, the net tax liability of Rs.3,66,039/- was confirmed against the appellant.

8. The appellant however claim that they have opted composition scheme of Work Contract for paying service tax in respect of service provided to M/s. ONGC & IOCL and have not taken Cenvat credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of Cenvat Credit Rules, 2004. Accordingly, actual service tax liability shall come to Rs.8,61,266/- instead of total service tax demand of Rs.14,42,622/-.

8.1 I find that the appellant was availing the benefit of Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 introduced vide Notification No. 32/2007-Service Tax, dated the 22nd May, 2007. In terms of sub-rule 3(1) of said Rules, the person liable to pay service tax in relation to works contract service shall have the option to discharge his service tax liability on the works contract service provided or to be provided, instead of paying service tax at the rate specified in section 66 of the Act, by paying an amount equivalent to **two per cent** of the gross amount charged for the works contract, provided no cenvat credit was taken. Relevant text is re-produced below;

3(1) Notwithstanding anything contained in section 67 of the Act and rule 2A of the Service (Determination of Value) Rules, 2006, the person liable to pay service tax in relation to works contract service shall have the option to discharge his service tax liability on the works contract service provided or to be provided, instead of paying service tax at the rate specified in section 66 of the Act, by paying an amount equivalent to two per cent. of the gross amount charged for the works contract.

Explanation. - For the purposes of this rule, gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, as the case may be, paid on transfer of property in goods involved in the execution of the said works contract.

(2) The provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.

(3) The provider of taxable service who opts to pay service tax under these rules shall exercise such option in respect of a works contract prior to payment of service tax in respect of the said works contract and the option so exercised shall be applicable for the entire works contract and shall not be withdrawn until the completion of the said works contract.



Later this rate was increased to 4% & 4.8% subsequently. However, the said scheme was rescinded vide Notification No. 35/2012-S.T., dated 20-6-2012, which came into force on the 1st day of July, 2012. The dispute pertains to period April, 2013 to September, 2013, i.e. after the aforesaid Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 was rescinded. Hence, I find that the abatement claimed by the appellant under said scheme shall not be available to them.

8.2 As regards the abatement claimed by the appellant under Valuation Rules, the adjudicating authority at **para-10.2** of the impugned order held that the service rendered by the appellant is classifiable under Works Contract Service. It was held that as the value of goods supplied were free of cost, in terms of Rule 2(i)(c) neither any deduction nor any abatement prescribed in Rule 2A(ii) shall be available to the appellant. I agree with the findings of the adjudicating authority. I find that once it has been held that the appellant has rendered the Work Contract service, then, the value of service portion in the execution of works contract shall be determined in terms of Rule 2A of the SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006. The relevant text of Rule 2A is reproduced below;

RULE [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 [or in goods and land or undivided share of land, as the case may be] transferred in the execution of the said works contract.

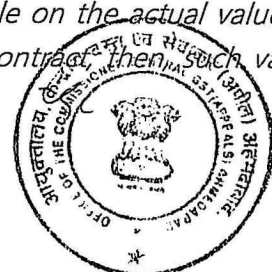
Explanation. - For the purposes of this clause,-

(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include, -

- (i) labour charges for execution of the works;*
- (ii) amount paid to a sub-contractor for labour and services;*
- (iii) charges for planning, designing and architect's fees;*
- (iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;*
- (v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;*
- (vi) cost of establishment of the contractor relatable to supply of labour and services;*
- (vii) other similar expenses relatable to supply of labour and services; and*
- (viii) profit earned by the service provider relatable to supply of labour and services;*

(c) where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then such value



adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause;

(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 :-

8.3 I find that in terms of Rule 2A (i) of the SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006, the 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 [or in goods and land or undivided share of land, as the case may be] transferred in the execution of the said works contract. In the instant case, as the goods were supplied free of cost by the service recipient the entire amount received by the appellant will have to be considered as a consideration received against the service. Thus, I find that the abatement/deduction claimed by the appellant in terms of Rule 2(A) (i) or Rule 2A(ii) shall not be eligible to them as there is no supply of material by the appellant in executing the works contract. Hence, the entire amount received under a contract shall be treated as a consideration against the service rendered.

9. I, therefore, I uphold the service tax demand of **Rs.3,66,039/-**. When the demand sustains there is no escape from interest liability. Hence, I find that the same is recoverable.

10. I find that the imposition of penalty under Section 76 is also justifiable as the appellant has failed to pay service tax alongwith interest. I find that the law laid down is very clear and there is no scope for interpretation or bonafide belief to escape the obligation. I find that the penalty under Section 77(2) is also imposable as the appellant has failed to assess the tax liability properly thereby reflecting less taxable value and filing incorrect ST-3 return.

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

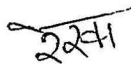
The appeal filed by the appellant stands disposed off in above terms.



ज्ञानचंद जैन
आयुक्त (अपील्स)

Dated: 28th December, 2023

सत्यापित/Attested :



रेखा नायर
अधीक्षक (अपील्स),
सी जी एस टी, अहमदाबाद



By REGD/SPEED POST A/D

BY RPAD / SPEED POST

To

M/s Shayar Construction Co.,
158/1, Opp. ONGC Colony,
At- Merda, Tal-Kadi,
Dist-Mehsana, Gujarat.

-

Appellant

The Assistant Commissioner,
CGST, Division Kadi,
Commissionerate Gandhinagar.

-

Respondent

Copy to: -

1. The Principal Chief Commissioner, CGST & C.Ex., Ahmedabad Zone.
2. The Commissioner, CGST & C.Ex., Commissionerate: Gandhinagar.
3. The Superintendent (System), CGST, Appeals, Ahmedabad. (for uploading the OIA).
4. Guard File.

