



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/1088/2022-APPEAL / 1122-36
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-018/2023-24 and 02.05.2023
(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. 04/AC/DEMAND/2021-22 dated 24.12.2021 passed by the Assistant Commissioner, CGST, Division-Mehsana, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s S.P. Chaudhari, B/22, Radhikrishna Township, Ramosana Chokdi, 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 अतः 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 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 ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

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

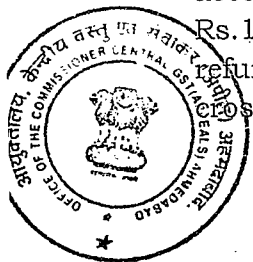
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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

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

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



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

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

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

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

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

(5) इन 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।

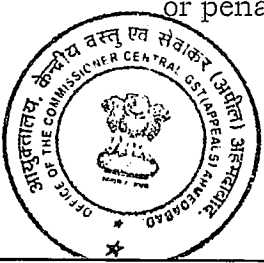
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

M/s. Chaudhary Shaileshkumar Pratapbhai, H/87, Dwarka Puri Flat, Radhanpur Road, Mehsana, Pin-384002 [Present address- B/22, Radhakrishna Township, Ramosana Chokdi, Mehsana- 384002] (hereinafter referred to as the "appellant") have filed the present appeal against Order-In-Original No. 04/AC/DEMAND/2021-22, dated 24.12.2021 (hereinafter referred to as the "impugned order"), issued by Assistant Commissioner, CGST & C.Ex., Division-Mehsana, Commissionerate-Gandhinagar (hereinafter referred to as the "adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AHCP9968NSD001 for providing taxable services. During the course of audit of the books and account of the appellant by the officers of Central Tax Audit, Ahmedabad, the Revenue Para Nos. 02 and 03, raised under Final Audit Report No. CE/ST-1086/2020-21, dated 22.03.2021, remained unsettled.

Issues involved in the Final Audit Report were as under:-

- i) Non-payment of Service Tax on Labour Services provided for construction of C.C.Road at different Society under SJMMSVY Youjna at Mehsana; [Service Tax involved- Rs. 3,18,727/-]
- ii) Non-payment of Service Tax on Labour Services provided for construction and development of Para lake at Mehsana; [Service Tax involved- Rs. 4,74,986/-]

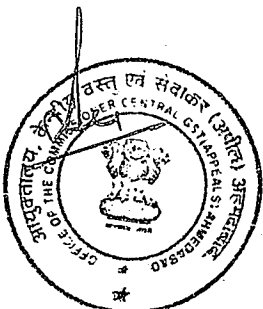
The appellant had not agreed to audit observations and also not paid the Service Tax / Interest / Penalty involved in the above audit paras raised by the officers of the Central Tax Audit, Ahmedabad.

3. The appellant were issued a Show Cause Notice vide F.No. VI/1(b)-263/S P Chaudhary/IA/19-20/AP-61, dated 26.03.2021, wherein it was proposed to:

- Demand and recover Service Tax amount totalling of Rs. 7,93,713/- [Rs. 3,18,727/- + Rs. 4,74,986/-] under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994;
- Impose penalty under Section 78(1) of the Finance Act, 1994.

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

- Demand of Service Tax amount totalling of Rs. 7,93,713/- [Rs. 3,18,727/- + Rs. 4,74,986/-] was confirmed under the proviso to Section 73 (1) of the Finance Act, 1994;
- Interest was imposed to be recovered under section 75 of the Finance Act, 1994;



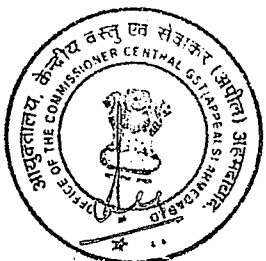
- Penalty amounting to Rs. 7,93,713/- was imposed under Section 78 of the Finance Act, 1994 ;
- Option was given for reduced penalty vide clause (ii) of the second proviso to Section 78(1) of the Finance Act, 1994.

5. Being aggrieved with the impugned order, the appellant have filed the present appeal alongwith an application for condonation of delay in filing appeal on the following grounds:-

- During the audit, the department observed that the appellant had not paid Service Tax on labour services provided by them for construction of CC Road at different societies under the Swarna Jayanti Mukhya Mantri Shehari Vikash Yojna [SJMMSVY], Mehsana. The department also observed that the appellant had not paid Service Tax on labour services provided for construction and development of Para Lake at Mehsana.
- The Municipality of Mehsana had issued Work Order No. 517/2016-17, dated 13.06.2016 to M/s Sarjan Infratech, Mehsana [Sarjan] for construction of CC Road under the Swarna Jayanti Yojana. In turn, Sarjan had sub contracted the work to the appellant under an agreement dated 01.09.2016 between them. After completion of work, the appellant raised Bill No.1 , dated 31.03.2017 for amount of Rs. 21,24,846/- to M/s Sarjan Infratech for labour sublet work for construction of CC Road at different societies at Mehsana.
- The appellant have provided labour service to M/s Sarjan Infratech for construction of CC Road under the Swarna Jayanti Yojana wherein the Municipal Corporation had provided free material supply for CC Road.
- The service rendered for the work to municipal corporation are exempted from Service tax in pursuance of Notification No. 25/2012- ST, dated 20.06.2012 . They referred and reproduced the Para 12A of the notification as under :-

"12A. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of-

- (a) *a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;*
- (b) *a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or*
- (c) *a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;*



under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date :

provided that nothing contained in this entry shall apply on or after the 1st April, 2020;";

- In pursuance of clause no. 29(h) of the Notification No. 25/2012- ST, dated 20.06.2012, exemption was granted to a sub contractor who executes the works contract to the main contractor who is covered under the said exemption. They referred and reproduced the Para 29 of the notification as under :-

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

- (a) sub-broker or an authorised person to a stock broker;*
- (b) authorised person to a member of a commodity exchange;*
- (c) mutual fund agent to a mutual fund or asset management company;*
- (d) distributor to a mutual fund or asset management company;*
- (e) selling or marketing agent of lottery tickets to a distributor or a selling agent;*
- (f) selling agent or a distributor of SIM cards or recharge coupon vouchers;*
- (g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or*
- (h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt; "*

Thus the appellant have executed the works contract service as a sub contractor. Since, principal contractor has been exempt from service tax, accordingly as a sub contractor appellant have also claimed exemption from the service tax.

- The SCN is barred by limitation.
- The appellant have relied upon various case laws in support of their claim of demand being barred by limitation, imposition of penalty under 78, levy of interest under Section 75 etc.

6. Personal hearing in the case was held on 18.04.2023. Shri Vipul Khandhar, Chartered Accountant, as authorized representative of the appellant, appeared for the hearing. He submitted a written submission during hearing. He reiterated the submissions made in appeal memorandum. He stated that the audit of records of the firm has already been done for the relevant period and separate proceedings have already been initiated.



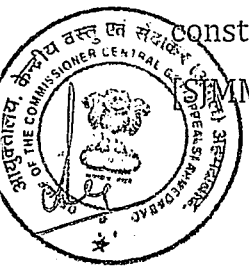
7. At the first and foremost, while dealing with the issue of condonation of delay, it is observed that the impugned order was issued on 24.12.2021 and appellant had claimed its receipt/ date of communication on 09.03.2022. The appellant have filed the present appeal on 12.05.2022. The appellant have, vide letter dated 01.06.2022, requested for condonation of delay of 4 days stating the reason that all the accounts and appeal related work of the appellant was handled by their old accountant, who expired during the Covid. Since, the appellant was not aware of the time limit to file appeal against such order; it resulted in delay of 4 days. Thus, a delay of four (4) days occurred in filing the present appeal beyond the prescribed time limit of two months as per the provisions of Section 85 of the Finance Act, 1994.

7.1 In terms of Section 85 of the Finance Act, 1994, an appeal before the Commissioner (Appeals) is to be filed within a period of two months from the receipt of the order being appealed. Further, the proviso to Section 85 (3A) of the Finance Act, 1994 allows the Commissioner (Appeals) to condone delay and allow a further period of one month, beyond the two month allowed for filing of appeal in terms of Section 85 (3A) of the Finance Act, 1994, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months.

7.2. On going through the submissions made by the appellant, I find that the appellant have claimed that all the accounts and appeal related work of the appellant was handled by their old accountant, who expired during the Covid. Since, the appellant was not aware of the time limit to file appeal against such order. Therefore, delay of 4 days occurred in filing the present appeal. I find that the reasons for the delay stated by the appellant are genuine and acceptable. Therefore, I am inclined to consider the request of the appellant and condone the delay in filing appeal.

8. As regards merit of the case, I have gone through the facts of the case, submissions made in the Appeal Memorandum as well as submissions made at the time of personal hearing and the materials available on the record. The issue before me for decision is as to whether the impugned order confirming the demand of Service Tax amounting to Rs. 7,93,713/- [Rs. 3,18,727/- (Revenue Para-2) + Rs. 4,74,986/- (Revenue Para-3)], along with interest and penalty, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period from October, 2016 to June, 2017.

9. Regarding the first issue, I find that the Municipal Corporation, Mehsana had awarded a work order dated 13.06.2016 to M/s Sarjan Infratech [Main contractor] for Construction of CC Road under Swarna Jayanti Mukhya Mantri Shehri Vikash Yojna [SJMMSVY] and in turn M/s Sarjan Infratech have further awarded a sub-contract



agreement dated 01.09.2016 to the appellant for providing pure labour services required for the said works. Accordingly, the appellant had provided only labour services for construction of CC roads at different societies at Mehsana to M/s Sarjan Infratech. For the said works all the materials were provided as a free issue by Municipal Corporation, Mehsana. Moreover, the said CC roads were used by society members and not by the General Public. Accordingly, the appellant had raised bill to M/s Sarjan Infratech for labour sublet work, without materials.

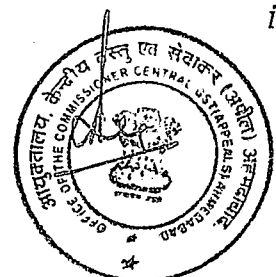
9.1 Regarding the second issue, I find that the Municipal Corporation, Mehsana had awarded a work order dated 11.08.2015 to M/s Sarjan Infratech for construction and development of Para lake at Mehsana and in turn M/s Sarjan Infratech have further awarded a sub-contract agreement dated 01.04.2016 to the appellant for providing pure labour services required for the said works. Accordingly, the appellant had provided only labour services for construction of RCC Compound wall, Bamboo Shaped Diwar, Entrance Plaza, Paver Block, Divider, Box Culvert, and leveling etc. required for construction and development of Para Lake at Mehsana, without materials, to M/s Sarjan Infratech. For the said works, all the materials were provided as a free issue by the Municipal Corporation, Mehsana. Accordingly, the appellant had raised bill to M/s Sarjan Infratech for labour sub-let work, without materials.

9.2 I find that both the aforesaid labour work fall under the category of service as defined under Section 65B (44) of the Finance Act, 1944 and the same are taxable as per Section 66B (51) of the Finance Act, 1944. The services provided by the appellant also do not fall under the negative list of services, hence, taxable.

9.3 I further find that the appellant, under the category of a sub-contractor, have executed labour sublet work for construction of CC Roads in different societies at Mehsana. These roads are being used by the society members only and not for the General Public. Therefore, exemption under Sr. No. 12 A of Notification No. 25/2012-S.T. and Sr. No. 13 of Notification No. 25/2012-S.T. cannot be extended to the appellant. Further, the appellant had provided labour sublet work to M/s Sarjan Infratech for construction and development/ beautification of Para Lake and not for any kind of water supply, irrigation purpose, hence, the exemption under Sr. No. 12 of Notification No. 25/2012-S.T. also cannot be extended to the appellant.

10. Further, it is relevant to refer to the definition of "Works Contract", as provided at clause 54 of Section 65B of the Finance Act, 1994. Same is re-produced below:-

(54) "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and



such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;

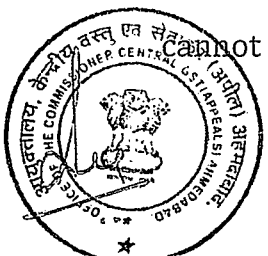
As already discussed, the Work Orders issued in this case clearly establishes that the contract was to provide only labour services for both the contracts which do not involve transfer of property in goods. The work orders in the case do not fall in the nature of services as Works Contract Services.

11. It is pertinent to refer Entry No. 29 of the Mega Exemption Notification No. 25/2012- S.T., dated 20.06.2012, as amended. Same is reproduced as below:-

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

- (a) sub-broker or an authorised person to a stock broker;*
- (b) authorised person to a member of a commodity exchange;*
- (c) mutual fund agent to a mutual fund or asset management company;*
- (d) distributor to a mutual fund or asset management company;*
- (e) selling or marketing agent of lottery tickets to a distributor or a selling agent;*
- (f) selling agent or a distributor of SIM cards or recharge coupon vouchers;*
- (g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or*
- (h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt; "*

In pursuance of clause no. 29(h) of the Notification No. 25/2012- ST, dated 20.06.2012, exemption was granted to a sub contractor, who executes the works contract to the main contractor who is covered under the Mega Exemption Notification. In the present case, M/s Sarjan Infratech have been awarded work orders by the Municipal Corporation, Mehsana for both the works of construction of CC Road in the Societies under SJMMSVY Youjana and also development/ beautification of Para Lake at Mehsana. However, to execute both the work orders materials were supplied as free issue by the Municipal Corporation, Mehsana. Thus, it is apparent that Municipal Corporation, Mehsana had given contract to provide pure labour services only. This contract was further sublet to the appellant. It is observed that since the services were not classified under the Work Contract Services, the benefit of exemption as provided vide Sr. No. 29(h) of Notification No. 25/2012-S.T., dated 20.6.2012, as amended, cannot be extended to the appellant.



12. Further, it is pertinent to refer Entry No. 12A of the Mega Exemption Notification No. 25/2012-S.T., dated 20.06.2012, as amended, inserted vide Notification No. 09/2016-S.T., dated 01.03.2016. Same is reproduced as below:-

"12A. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

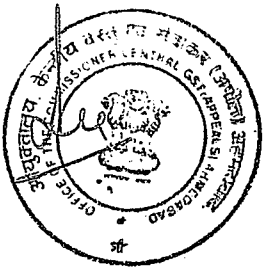
(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;

under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date:

provided that nothing contained in this entry shall apply on or after the 1st April, 2020;"

In pursuance of the clause no. 12A of the Notification No. 25/2012- ST, dated 20.06.2012, exemption was granted to such services provided to the Government or a local authority or a governmental authority by way of construction, under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date. It is on record and evident that in the present matter main contractor as well as the appellant have entered into agreements / sub-contracts in April, 2016 and September, 2016 much after the notified date 1st March, 2015 during the F.Y. 2016-17. Thus, the appeal filed by the appellant claiming exemption under Entry No. 12A of the Notification No. 25/2012-S.T. is not legally tenable and is inadmissible to them.

13. I further find that the appellant have apparently willfully suppressed the facts and willfully not declared the taxable value in the statutory returns i.e. ST-3 of the relevant period with an intent to evade the payment of Service Tax liabilities. Therefore, I find that adjudicating authority has correctly invoked the extended period of limitation. Hence, the various case laws referred by the appellant can not be made applicable in the facts and circumstances of the present case.

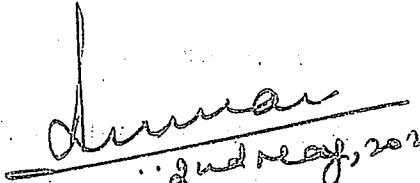


14. In view of the above discussion, I hold that the adjudicating authority has rightly arrived to the conclusion that the appellant is not entitled for benefit of Mega Exemption Notification No. 25/2012-S.T., dated 20.6.2012, as amended. Hence they are liable to pay Service Tax alongwith interest and penalty as demanded vide the impugned order.

15. In view of the facts discussed herein above, I uphold the impugned order and reject the appeal filed by the appellant.

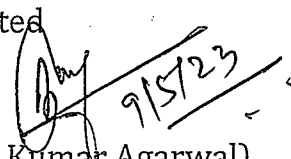
16. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(Akhilesh Kumar)
Commissioner (Appeals)

Date: 02.05.2023

Attested


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



BY RPAD / SPEED POST

To,
M/s. Chaudhary Shaileshkumar Pratapbhai,
B/22, Radhakrishna Township,
Ramosana Chokdi,
Mehsana- 384002, Gujarat.

Copy to: -

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

