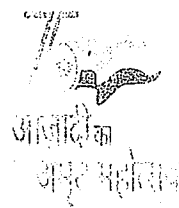




सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
GST Bhavan, Ambawadi, Ahmedabad-380015
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in
Website : www.cgstappealahmedabad.gov.in



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(क)	फाइल संख्या / File No.	GAPPL/COM/STP/1787/2022-APPEAL / 2162-66
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-036/2023-24 and 17.05.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	12.06.2023
(ङ)	Arising out of Order-In-Original No. 113/AC/DEM/MEH/ST/V.B.C. Buildcon/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 VBC Buildcon Private Limited, 201/1, 2nd Floor, Kensvilla, Nr. Ramosana Circle, Mehsana-Unjha Highway, 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 संख्यां ईए-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.

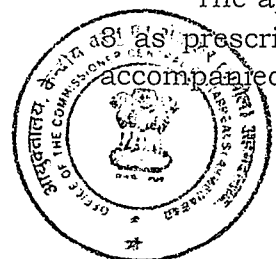
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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।

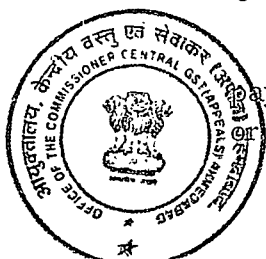
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



ORDER-IN-APPEAL

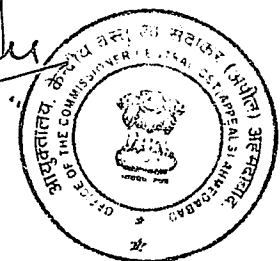
The present appeal has been filed by M/s. VBC Buildcon Private Limited, 201/1, 2nd Floor, Kensvilla, Nr. Ramosana Circle, Mehsana-Unja Highway, Mehsana – 384002 (hereinafter referred to as “the appellant”) against Order-in-Original No. 113/AC/DEM/MEH/ST/V.B.C. Buildcon/2021-22, dated 31.03.2022 (issued on 01.04.2022), (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division Mehsana, (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. AAFCV2950CSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2016-17, it was noticed that there is difference of value of service amounting to Rs. 8,75,674/- between the gross value of service provided in the said data and the gross value of service shown in Service Tax return filed by the appellant for the FY 2016-17. The appellant were called upon to submit clarification for difference along with supporting documents, for the said period. However, the appellant had not responded to the letters issued by the department.

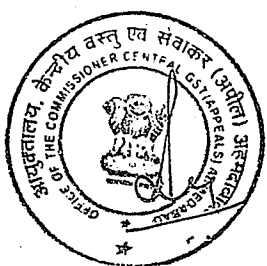
2.1 Subsequently, the appellant were issued Show Cause Notice No. V.ST/11A-239/VBC Buildcon/2020-21 dated 18.08.2020 demanding Service Tax amounting to Rs. 1,31,351/- for the period FY 2016-17, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(2), Section 77C and Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 1,31,351/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2016-17. Further, (i) Penalty of Rs. 1,31,351/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994; and (iii) Penalty of Rs. 200/- per day till the date of compliance or Rs. 10,000/-, whichever is higher was imposed on the appellant under Section 77(1)(c) of the Finance Act, 1994.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the following grounds:



- The appellant were providing taxable services as well as exempted services and were holding Service Tax Registration No. AAFCV2950CSD001 and regularly filed all Service Tax Returns.
- The adjudicating authority without considering documentary evidences like Main Contract allotted to M/s. V. B. Chaudhary, Mehsana, Sub-Contract Agreement between M/s. V. B. Chaudhary and appellant and the arguments put forth by the appellant and misinterpreted the contract agreement and the invoice of appellant and erroneously came to conclusion that M/s. V.B. Chaudhary, was entered into the contract dated 15.02.2017 with the appellant only for labour work in respect of Operation & Maintenance of Pipeline and Water Supply to village covered under Dharoi / Kheralu / Vadnagar / Visnagar groups. The adjudicating authority has held that the appellant has provided said labour services and issued Bill No. 2 dated 03.03.2017 for labour charges of Rs. 8,75,550/-, which was not exempted service and the appellant is liable for payment of Service Tax.
- As per Accounting Standard-7 on Construction contracts, the revenue is supposed to be recognize in balance sheet of service provider on the basis of percentage of completion method. Similarly, as per Accounting Standard-29 on "Provisions, Contingent liabilities and Contingent assets", generally recipient of services recognizes the provision for expenses on their balance sheet date as per their estimated calculation and pay taxes on the same which is reflected in 26AS and the methodology of their client need not be same as that of appellant's and this may lead to the difference in 26AS as well as appellant's revenue numbers. Therefore, business and line of activities and as per the Accounting Standards issued by the ICAI the comparison of 26AS is misleading and will not be comparable at any point of time. Therefore, the methodology on the basis of which department calculated the differential value of services is not correct and not sustainable under the law.
- The appellant further submitted that the adjudicating authority has simply on the basis of figures shown in Form 26AS / Income Tax Return filed by the appellant issued the demand without examining the scope of service tax. In this regard the appellant relied upon the decision of Hon'ble CESTAT Regional Bench, Allahabad in case of M/s. Khushi Construction V/s. CGST NACIN ZTI, Kanpur in Appeal No. ST/71307/2018.
- The appellant further submitted that the adjudicating authority has failed to appreciate the submission made by them in reply to show cause notice. The Executive Engineer, Gujarat Water Supply & Sewerage Board (GWSSB), Mehsana, vide letter No. AB/TC/DH.JU.PA.PU.YO/Dharol group/O&M/2016 dated 29.01.2016 allotted the

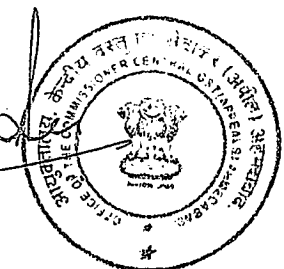


work contract for Operation and Maintenance work of pipeline and water supply to village covered under Dharol / Kheralu / Vadnagar / Visnagar groups to M/s. V.B. Chaudhary, Mehsana. In turns, M/s. V.B. Chaudhary had sub-contracted small works contract to appellant, for which an agreement deed dated 15.02.2017 was made between both the party. Looking to the terms and condition of the above agreement deed, it is crystal clear that the appellant were required to complete the work contract of Operation & Maintenance of Pipe Line and Water Supply by bringing out the required machinery and required goods. Further, it is clear that if the appellant failed to complete the work within specified time frame as per the direction of GWSSB than in such case the appellant would liable to face the consequences. Thus, it is clear that the appellant has provided the service of work contract for Operation & Maintenance to main contractor and not the service of providing labour supply services as the adjudicating authority held in the impugned order.

- In view of the above, the demand of service tax is not sustainable on merit as well as on limitation, therefore, question of payment of interest and imposition of penalties under various section does not arise.
- The appellant further submitted that without prejudice to above submission for sake of argument accepting without admitting that the appellant have provided labour supply services than in such case the adjudicating authority has failed to grant cum tax benefit to the appellant. It is facts on record that the appellant have received total amount of Rs. 8,75,550/- from M/s. V.B. Chaudhary, Mehsana, it not the case of department that the appellant have collected the service tax but not paid. No separate service tax received by the appellant, therefore, the said amount is gross receipt including the service tax, if any applicable. However, the adjudicating authority has confirmed the demand of service tax on the gross amount, without extending benefit of cum tax value.

4. Personal hearing in the case was held on 15.03.2023. Shri Naresh Satwani, Consultant, appeared on behalf of the appellant for personal hearing. He submitted a written submission during hearing. He reiterated submissions made in appeal memorandum.

4.1 The appellant, in their additional written submission produced during the course of personal hearing, inter alia, re-iterated the submission made in the appeal memorandum. The appellant submitted copy of letter No. AB/TC/DH.JU.PA.PU.YO/Dharol group/O&M/161/2016 dated 29.01.2016 issued by the Executive Engineer, Gujarat Water Supply & Sewerage Board (GWSSB), Mehsana, allotting the work contract for Operation and



Maintenance work of pipeline and water supply to village covered under Dharol / Kheralu / Vadnagar / Visnagar groups to M/s. V.B. Chaudhary, Mehsana and copy of an agreement deed dated 15.02.2017 made between M/s. V.B. Chaudhary and the appellant.

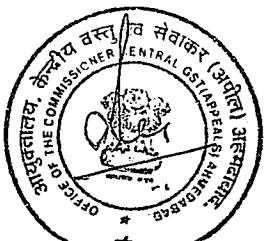
5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period FY 2016-17.

6. It is observed that the main contention of the appellant is that they have provided work contract services to Gujarat Water Supply & Sewerage Board (GWSSB), Mehsana as sub-contractor of M/s. V. B. Chaudhary, Mehsana and the service provided by them were exempted from service tax as per Sr. No. 12(e) read with Sr. No. 29(h) of the Notification No. 25/2012-ST dated 20.06.2012.

7. I find that the adjudicating authority had confirmed the demand of service tax observing that M/s. V.B. Chaudhary has entered into the contract dated 15.02.2017 with the appellant only for labour work in respect of Operation & Maintenance of Pipeline and Water Supply and the appellant has provided said labour services, which was not exempted service and the appellant is liable for payment of Service Tax. The adjudicating authority has, while confirming the demand of service tax, held as under:

"21. In this regard, the assessee has contended that they have regularly filed ST-3 returns and paid Service Tax on maintenance and repairing services provided to GETCO; that they have received Works Contract for water supply Maintenance and Repairing works from Gujarat Water Supply and Drainage Board, Mehsana. The said works contracts awarded to Shri Vaghajibhai Babubhai Chaudhary as a sub-contract for O&M with compressive repairing & maintenance of water pumping station and public utility; that they have submitted the copy of ITR with Balance Sheet, Form 26AS, Copy of Main Contract awarded by Gujarat Water Supply and Drainage Board, Mehsana to M/s. V.B. Chaudhary, Copy of Contract awarded by M/s. V.B. Chaudhary to them and Copy of Bill No. 02 dated 03.03.2017 issued to M/s. V.B. Chaudhary.

22. I have perused the copy of ITR with Balance Sheet, Form 26AS, Copy of Main Contract awarded by Gujarat Water Supply and Drainage Board, Mehsana to M/s. V.B. Chaudhary, Copy of Contract awarded by M/s. V.B. Chaudhary to them and Copy of Bill No. 02 dated 01.03.2017 issued to M/s. V.B. Chaudhary and I find that



the Gujarat Water Supply and Drainage Board, Mehsana has awarded the Works Contract dated 29.01.2016 for Operation & Maintenance of Pipeline and Water Supply to Village covered under Dharoi/Kheralu/Vadnagar/Visnagar groups to M/s. V.B. Chaudhary.

22.1 I further find that, M/s. V.B. Chaudhary, was entered into the contract dated 15.02.2017 with the assessee only for labour work in respect of Operation & Maintenance of Pipeline and Water Supply to Village covered under Dharoi/Kheralu/Vadnagar/Visnagar groups. Accordingly, during FY 2016-17, the assessee has provided said labour services and issued Bill No. 02 dated 03.03.2017 for labour charges of Rs. 8,75,550/- for following works to M/s. V.B. Chaudhary, as clearly revealed from the copy of said bill submitted by them:

- 1. Clearing of head works campus at Vadnagar Sub Head Works;*
- 2. Clearing of head works campus at Gunja Sub Head Works;*
- 3. Clearing of head works campus at Kadarapur Sub Head Works;*
- 4. Clearing of head works campus at Kothasana Sub Head Works;*
- 5. Clearing of head works campus at Valam Sub Head Works;*
- 6. Clearing of overhead Tank at Vadnagar Sub Head Works;*
- 7. Clearing of overhead Tank at Vadnagar Sub Head Works;*
- 8. Clearing of overhead Tank at Gunja Sub Head Works;*
- 9. Dewatering.*

22.2 Thus, the assessee has awarded the labour contract for Operation & Maintenance of Pipeline and Water Supply without supply of materials and accordingly, they issued bill for only labour charges to M/s. V.B. Chaudhary. Hence, the services provided by the assessee cannot be construed as "Works Contract Services".

8. I find that in the SCN in question, the demand has been raised for the period FY 2016-17 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services under Sales / Gross Receipts from Services" provided by the Income Tax Department, no other cogent reason or justification is forthcoming from the SCN for raising the demand against the appellant. It is also not specified as to under which category of service the non-levy of service tax is alleged against the appellant. Merely because the appellant had reported receipts from services, the same cannot form the basis for arriving at the conclusion that the respondent was liable to pay service tax, which was not paid by them. In this regard, I find that CBIC had, vide Instruction dated 26.10.2021, directed that:

"It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.



3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee."

8.1 In the present case, I find that letters were issued to the appellant seeking details and documents, which were allegedly not submitted by them. However, without any further inquiry or investigation, the SCN has been issued only on the basis of details received from the Income Tax department, without even specifying the category of service in respect of which service tax is sought to be levied and collected. This, in my considered view, is not a valid ground for raising of demand of service tax, specifically when the appellant was registered with Service Tax department and had filed ST-3 Returns regularly.

9. For ease of reference, I hereby produce the relevant abstract of the Notification No. 25/2012-ST dated 20.06.2012 as amended, which reads as under:

"Notification No. 25/2012-Service Tax dated 20th June, 2012

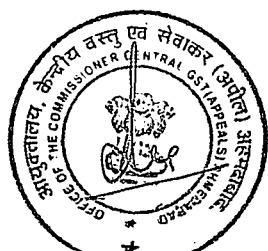
G.S.R. 467(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

1...

2... ..

12. 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]; ****
omitted by Notification No. 6/2015-ST dated 01.03.2015 w.e.f. 01.04.2015



(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity

specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

(c) [a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;] ***** omitted by Notification No. 6/2015-ST dated 01.03.2015 w.e.f. 01.04.2015

(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

(f)

.....

29. Services by the following persons in respective capacities –

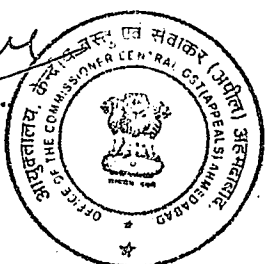
(a)

(b)

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;”

9.1 On verification of the various documents provided by the appellant, viz. letter No. AB/TC/DH.JU.PA.PU.YO/Dharol group/O&M/161/2016 dated 29.01.2016 issued by the Executive Engineer, Gujarat Water Supply & Sewerage Board (GWSSB), Mehsana, allotting the work contract for Operation and Maintenance work of pipeline and water supply to village covered under Dharol / Kheralu / Vadnagar / Visnagar groups to M/s. V.B. Chaudhary, Mehsana and copy of an agreement deed dated 15.02.2017 made between M/s. V.B. Chaudhary and the appellant, I find that the appellant had provided services related to Operation and Maintenance work of pipeline and water supply to GWSSB (a governmental organization), as a sub-contractor.

9.2 I also find that in the impugned order, while confirming the demand of Service Tax, the adjudicating authority has referred the contract dated 15.02.2017 between M/s. V.B. Chaudhary and the appellant and came to conclusion that the appellant were awarded the contract only for labour work in respect of Operation & Maintenance of Pipeline and Water Supply. However, the adjudicating authority appears to have ignored the Condition No. 1 mentioned therein, under which it is explicitly mentioned that the work of the aforesaid tender is required to be complete by the appellant by providing / by utilizing miscellaneous goods and machinery.



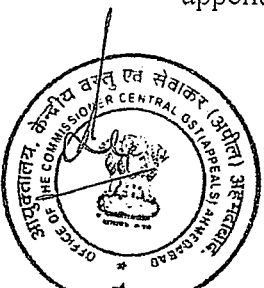
9.3 I also find that 'works contract' as defined under Section 65B(54) of the Finance Act, 1994 also includes any contract for maintenance of moveable and immovable property. It is not disputed that the contract awarded by the GWSSB to M/s. V.B. Chaudhary was for "Operation & Maintenance of Pipeline and Water Supply" and part of the said contract was awarded by M/s. V.B. Chaudhary to the appellant. Thus, the appellant have also provided works contract service. It is also observed that the invoice issued by the appellant was as per the schedule given under the agreement / contract dated 15.02.2017 between M/s. V.B. Chaudhary and the appellant and the invoice issued by the appellant no where suggested that the appellant provided only labour service as contended by the adjudicating authority. The definition of the "Work Contract" as per Section 65B(54) of the Finance Act, 1994 reads as under:

"Section 65B(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."

9.4 As per Sr. No. 12(e) of the Notification No. 25/2012-ST dated 20.06.2012, the services provided to the Government by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of pipeline, conduit or plant for water supply were exempted from Service Tax. Further, as per Sr. No. 29(h) of the Notification No. 25/2012-ST dated 20.06.2012, services provided by sub-contractor by way of works contract to another contractor providing works contract services which are exempt were exempted from Service Tax. Thus, I am of the considered view that the services provided by the appellant were exempted as per Sr. No. 12(e) read with Sr. No. 29(h) of the Notification No. 25/2012-ST dated 20.06.2012.

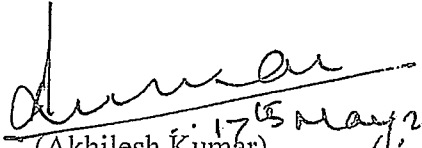
10. In view of above, I hold that the impugned order passed by the adjudicating authority confirming demand of Service Tax, in respect of services provided by the appellant to M/s. V.B. Chaudhari during the FY 2016-17, is not legal and proper and deserves to be set aside. Since the demand of service tax is not sustainable on merits, there does not arise any question of charging interest or imposing penalties in the case.

11. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.




12. अपील कर्ता 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)

Attested

Date : 17.05.2023


(R. C. Maniyar)
Superintendent(Appeals),
CGST, Ahmedabad



By RPAD / SPEED POST

To,

M/s. VBC Buildcon Private Limited,
201/1, 2nd Floor, Kensvilla,
Nr. Ramosana Circle,
Mehsana-Unja Highway,
Mehsana – 384002

Appellant

The Assistant Commissioner,
CGST, Division Mehsana.

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Gandhinagar
- 3) The Assistant Commissioner, CGST, Division Mehsana
- 4) The Assistant Commissioner (HQ System), CGST, Gandhinagar

(for uploading the OIA)

5) Guard File

6) PA file