



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/2656/2022-APPEAL / 2129-31
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-045/2023-24 and 30.05.2023
(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. 81/AC/DEM/MEH/ST/Armed Security Guard & Labour Service, Mehsana/2022-23 dated 20.06.2022 passed by the Assistant Commissioner, CGST, Division-Mehsana, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Armed Security Guard & Labour Service (AGXPP1436G), B-26, Krishna Shopping, Panchlimdi, Mehsana, Gujarat-384001

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

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

भारत सरकार का पुनरीक्षण आवेदन:-

Revision application to Government of India:

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

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

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course



of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं 2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

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

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

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

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

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

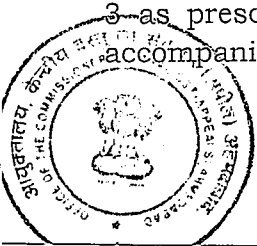
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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

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

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of



Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

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

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

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

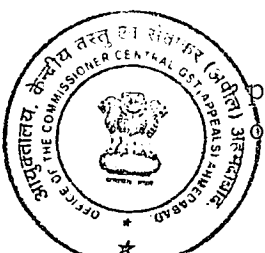
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



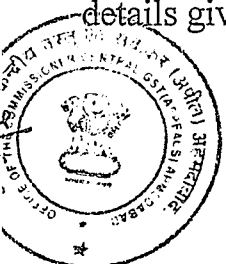
अपीलियआदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s. Armed Security Guard & Labour Service, B-26, Krishna Shopping Centre, Paanch Limdi, Mahesana, Gujarat - 384001 (hereinafter referred to as the appellant) against Order in Original No. 81/AC/DEM/MEH/ST/Armed Security Guard & Labour Service, Mahesana/2022-23 dated 20.06.2022 [hereinafter referred to as the "*impugned order*"] passed by the Assistant Commissioner, CGST, Division: Mahesana, Commissionerate: Gandhinagar [hereinafter referred to as the "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant were engaged in providing taxable services and holding Service Tax Registration No. AGXPP1436GST001. As per the information received through Preventive Section, HQ, Gandhinagar vide D G Systems Report No. 02 & 03, discrepancies were observed in the total income declared by the appellant in their Income Tax Returns (ITR) when compared with the Service Tax Returns (ST-3) for the period F.Y. 2015-16 and F.Y. 2016-17. In order to verify the discrepancies in these figures, letters dated 08.05.2020, 15.06.2020 and 02.07.2020 were issued to the appellant through e-mail calling for details of services provided during the period F.Y. 2015-16 and F.Y. 2016-17. The appellants submitted their reply vide letter dated 18.06.2020. During the verification of the details/documents provided by the appellant, mismatch between Income Tax data and Service Tax data was observed. Accordingly, it appeared that this mismatch in the data have resulted in short payment of Service Tax during the relevant period.

3. The jurisdictional officers observed that the nature of service provided by the appellant were covered under the definition of 'Service' as per Section 65 B(44) of the Finance Act, 1994 (FA, 1994), and their services were not covered under the 'Negative List' as per Section 66 D of the FA, 1994. Further, their services were not found to be exempted vide the Mega Exemption Notification No. 25/2012-S.T dated 20.06.2012 (as amended).

4. The Service Tax liability of the appellant for the F.Y. 2015-16 and F.Y. 2016-17 was calculated on the basis of difference between 'Value of Services declared in ITR' and 'Value of Services Provided as per ST-3 Returns', as per details given in table below :



Sr. No	Financial Year (F.Y.)	Differential Taxable Value as per Income Tax data (in Rs.)	Rate of Service Tax	Service Tax liability to be demanded (in Rs.)
1	2015-16	2,11,35,475/-	14.5%	30,64,644/-
2	2016-17	0	15%	0

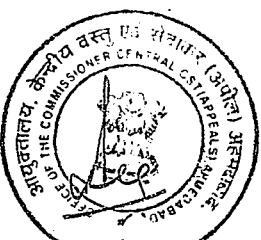
4.1 The appellant were issued Show Cause Notice under F.No. V.ST/11A-267/ASGLS/2020-21 dated 07.09.2020 (in short SCN) wherein it was proposed to demand and recover service tax amounting to Rs. 30,64,644/- under the proviso to Section 73 (1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994. It was also proposed to impose penalties under Section 77 and 78 of the Finance Act, 1994.

5. The SCN was adjudicated vide the impugned order wherein

- the demand for Rs. 30,64,644/- was confirmed under Section 73 (2) of the Finance Act, 1994 alongwith interest under Section 75;
- Penalty of Rs. 10,000/- was imposed under Section 77(2) of the Finance Act, 1994;
- Penalty amounting to Rs. 200/- per day till the date of compliance or Rs. 10,000/- whichever is higher was imposed under Section 77(1)(C) of the Finance Act, 1994
- Penalty amounting to Rs. 30,64,644/- was imposed under Section 78 of the Finance Act, 1994 alongwith option for reduced penalty under proviso to clause (ii).

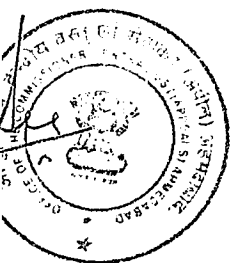
6. Being aggrieved with the impugned order, the appellant have filed this appeal on following grounds:

- During the period F.Y. 2015-16, they have provided Housekeeping services to various Government authorities and Educational Institutions, i.e., ITI's of various districts of Gujarat, Adarsh Nivasi Schools, Sarkari Kanya Chhatralay of various districts, Shree Lakadia Kelavani Mandal, Bhachhau, Collector, Kutchh at Bhuj; Municipal Officer Jamnagar and Security Services to Sardar Krushinagar, Dantiwada Krushi University.
- During the period F.Y. 2015-16, Housekeeping Services and Security Services provided to Educational Institutions were exempt from Service Tax by virtue of Sr. No. 9 of Notification No. 25/2012-ST dated



20.06.2012. Hence, the above services provided to various educational institutions by the appellant are exempted from levy of service tax.

- During the period F.Y. 2015-16, the appellant have provided security services by way of manpower supply to various corporate bodies. They are not liable to pay service tax in respect of these services in terms of Sr. No. 8 of Notification No. 30/2012-ST dated 20.06.2012, as amended vide Notification No. 07/2015-ST dated 01.03.2015, which provides that the service receiver being a body corporate, 100% Service Tax is required to be paid by the service receiver (body corporate) under Reverse Charge Mechanism (RCM).
- Against the departments contention that during the F.Y. 2015-16, the appellants have short paid Service Tax amounting to Rs. 30, 64,644/-, the appellants have submitted a detailed table of calculation based on their Income Ledgers and Balance Sheet vis-à-vis their ST-3 Returns. The said calculation shows that out of the total leviable Service Tax amounting to Rs. Rs. 17,86,755/-, an amount of Rs. 17,86,211/- was paid by them and an amount of Rs. 544/- only is required to be paid.
- In support of their contentions, they relied on the following judicial pronouncements :
 - Decision of the Hon'ble CESTAT in the case of Regional Manager Tobacco Board Vs Commr. of C.Ex., Mysore - 2013 (31) STR 673 (Tri.Bang).
 - Decision of the Hon'ble CESTAT in the case of Anvil Capital Management (P) Ltd Vs Commr. of S.T, Mumbai - 2010 (20) STR 789 (Tri. Mum).
 - Decision of the Hon'ble CESTAT in the case of Commr. of Service Tax, Ahmedabad Vs Purni Ads Pvt.Ltd - 2010 (19) STR 242 (Tri. Ahmd).
 - Decision of the Hon'ble CESTAT in the case of Sify Technologies Vs Commissioner of Service Tax, Chennai - 2009 (16) STR 63 (Tri. Mad).
 - Decision of the Hon'ble CESTAT in the case of Bhogilal Chhagulal Vs Commr. of S.T, Ahmedabad - 2013 (30) STR 62 (Tri. Ahmd).



➤ The appellants have filed their ST-3 as well as ITR during the relevant period and there is no suppression or willful misstatement on their part, therefore extended period of limitation cannot be invoked for confirmation of the demand. Consequently, penalty under Section 78 is also not imposable. Since there is no short payment of service tax by the appellant, penalty under Section 77 is also not imposable.

➤ They further relied on the following decisions :

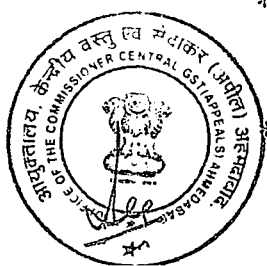
- CCE Vs Chemphar Drugs and Liniments reported as 1989 (40) ELT 276 (SC)
- Bharat Wagon & Engg.CO.Ltd Vs Commissioner of C.Ex., Patna reported as (146) ELT 118 (Tri.Kol).
- Goenka Woollen Mills Ltd Vs Commissioner of C.Ex., Shillong, reported as 2001(135) ELT 873 (Tril Kol.)
- Bhilwara Spinners Ltd. Vs Commissioner of Central Excise, Jaipur reported as 2001 (129) ELT 458 (Tri. Del).

➤ They submitted Service Tax Reconciliation statement for the F.Y. 2015-16 containing names of all service receivers; copy of Audit Report for F.Y. 2015-16; Balance Sheet for F.Y. 2015-16;

7. Personal Hearing in the case was held on 18.04.2023. Mr. Vipul Khandhar, Chartered Accountant, appeared on behalf of the appellant for the hearing. He submitted a written submission during hearing. He reiterated the submissions made in the appeal memorandum.

7.1 Vide their additional written submission, the appellant have reiterated the grounds of appeal submitted in their appeal memorandum and further submitted various documents as under :

- * Reconciliation statement of receipts to Form-26AS for the period F.Y. 2016-17;
- * Copies of Reconciliation Statement with books to Form 26AS for the F.Y. 2015-16 and F.Y. 2016-17;
- * Reconciliation of total income/sales as shown in Balance Sheet for the F.Y. 2015-16;
- * Service Tax reconciliation statement for the F.Y. 2015-16;



- * Service wise and date wise details of deposit of service tax for the F.Y. 2015-16;
- * Categorywise Service Tax calculation sheet ;
- * Service Tax reconciliation statement for the F.Y. 2016-17 ;
- * Copies of ST-3 returns for the F.Y. 2015-16;
- * Copy of Audit Report for the F.Y. 2015-16;
- * Copy of Profit & Loss Account for the F.Y. 2016-17;
- * Copy of balance sheet for the F.Y. 2016-17;
- * copy of Form 26AS for the F.Y. 2015-16 and F.Y. 2016-17;

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during hearing, additional submissions and the materials available on records. 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 amounting to Rs. 30,64,644/- alongwith interest and penalties, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16.

9. It is observed that the appellant are registered with the department and have filed their ST-3 Returns. They had also submitted their reply to the queries raised by the jurisdictional officers vide letter dated 18.06.2020. However, there is no discussion on the submissions made by the appellant and the SCN in the case has been issued only on the basis of data received from the Income Tax department without ascertaining the nature of service provided or classifying them. It is apparent that no further verification has been caused to ascertain the nature of service and whether any exemptions/abatement were claimed by the appellant. Hence, the SCN was issued in clear violation of the CBIC Instructions dated 20.10.2021, relevant portion of the Instructions is re-produced as under :

...

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

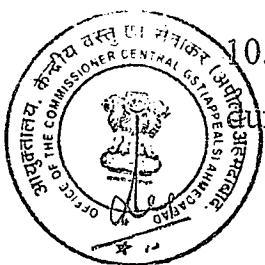


Considering the facts of the case and the specific Instructions of the CBIC, I find that the SCN was issued indiscriminately and is vague.

10. It is also observed that during the relevant period, the appellant have filed their ST-3 Returns. They have classified their services under three different categories and claimed exemption/abatment for each service separately. It is also observed that the appellant have paid Service Tax amounting to Rs. 17,69,550/- during the period and their assessment/classification of service as well as abatement/exemptions claimed has not been disputed in the SCN or in the impugned order. Details of the ST-3 Returns filed by the appellant are tabulated as under :

DETAILS OF ST-3 RETURN FILED DURING F.Y. 2015-16									
Period of Return	Due date of Return	Date of Filing	Classification of Service	Claim of Abatement/Exemption	Gross Taxable Value (in Rs.)	Abatement claimed (in Rs.)	Exemption claimed (in Rs.)	Net Taxable value (in Rs.)	Service Tax paid (in Rs.)
April-Sep.	25/10/2015	30/12/2015	Security / Detective Agency Service	Sl.No.8 of Not.No.30 / 2012-ST	1,18,74,705	15,69,723	85,22,738	17,82,244	2,37,062
			Manpower Recruitment / Supply Agency Services	Sl.No.8 of Not.No.30 / 2012-ST	23,65,812	0	0	23,65,812	3,07,850
			Works Contract Service	Sl.No.9 of Not.No.30 / 2012-ST and Sl.No.1 of Not.No.24 / 2012-ST	12,80,828	1,34,209	5,73,310	5,73,309	78,684
Oct.-March	29/04/2016	02/07/2016	Security / Detective Agency Service	Sl.No.8 of Not.No.30 / 2012-ST	1,39,55,644	0	1,06,39,302	33,16,342	4,80,096
			Manpower Recruitment / Supply Agency Services	Sl.No.8 of Not.No.30 / 2012-ST	70,89,702	0	33,91,694	36,98,008	5,35,619
			Works Contract Service	Sl.No.9 of Not.No.30 / 2012-ST and Sl.No.1 of Not.No.24 / 2012-ST	20,19,361	2,15,211	9,02,075	9,02,075	1,30,239
				TOTAL	3,85,86,052	19,19,143	2,40,29,119	1,26,37,790	17,69,550

10.1 It is observed from the case records that appellant is a Proprietorship firm and during the relevant period, they have classified the services provided by them



under 'Security/detective Agency Service', 'Manpower recruitment/Supply agency service' and 'Works Contract Service'. They have claimed exemption/ abatement vide 'Reverse Charge Mechanism' under Sr. No. 8 of Notification No. 30/2012-ST dated 20.06.2012 (as amended); Sl. No. 9 of Notification No. 30/2012-ST dated 20.06.2012 and Sl. No. 1 of Notification No. 24/2012-ST dated 01.06.2012 . Admittedly, during F.Y. 2015-16, they have paid service tax on a net taxable value amounting to Rs. 1,26,37,790/- after availing abatement/exemption on the Gross Taxable Value of Rs. 3,85,86,052/-. The assessment declared in the ST-3 Returns have not been disputed by the adjudicating authority. He has, however, confirmed the demand proposed in the SCN without discussing the claims of the appellant regarding services provided to various entities, as declared in Form 26AS (Para 19 and Para 19.1 of the impugned order), without considering the exemption/abatement for the differential amount. He has, at Para-22 of the impugned order, concluded that the appellant had not submitted any documents and hence he cannot extend the benefit of exemption/abatement and RCM to the assessee. I find that the findings arrived by the adjudicating authority are vague in as much as the details mentioned in Para-19 and Para-19.1 of the impugned order was required to be first examined for leviability of service tax. These details were given in the income tax data (ITR/Form-26AS).

10.2 In order to have a clear understanding of the different exemption/ abatements claimed by the appellant, relevant portion of the Notifications are reproduced below:

*Government of India
Ministry of Finance
(Department of Revenue)*

*Notification No. 30/2012-Service Tax
New Delhi , the 20 th June, 2012*

GSR(E).-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012- Service Tax, dated the 17 th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 213(E), dated the 17 th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31 st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849 (E), dated the 31 st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-



(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely:-

Table

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
1	in respect of services provided or agreed to be provided by an insurance agent to any person carrying on insurance business	NIL	100%
...	...		
8	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose	NIL	100%
9	in respect of services provided or agreed to be provided in service portion in execution of works contract	50%	50%

10.2.1

Government of India
Ministry of Finance
(Department of Revenue)

New Delhi, the 6th June, 2012

Notification No. 24/2012 - Service Tax

G.S.R. (E).- In exercise of the powers conferred by clause (aa) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) number 11/2012 - Service Tax, dated the 17 th March, 2012, published in the Gazette of India, Extraordinary, vide number G.S.R. 209 (E), dated the 17 th March, 2012, the Central Government, hereby makes the following rules further to amend the Service Tax (Determination of Value) Rules, 2006, namely :-

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

Explanation.- For the purposes of this clause,-

(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;

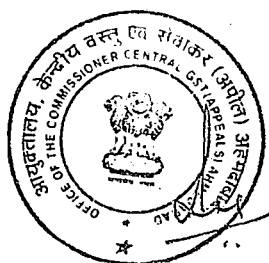
(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;

(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:-

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

(B) in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy percent. of the total amount charged for the works contract;

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

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

(a) "original works" means-

(i) all new constructions;

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

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

(d) "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services, if any; and

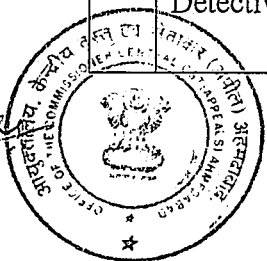
(ii) the value added tax or sales tax, if any, levied thereon: Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

Explanation 2. --For the removal of doubts, it is clarified that 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."

10.3 On perusal of the legal provisions above, I find merit in the contention of the appellant that they were not required to discharge service tax on the entire differential value between income declared in Profit & Loss Account/Form 26AS and those in ST-3 Returns.

11. The appellants have submitted a reconciliation statement for the period F.Y. 2015-16 and as per the said statement the exemption/abatements claimed by the appellant in respect of different services provided by them are tabulated as under :

Sr. No	Type of Service provided	Amount of Taxable Value claimed under Full Rate of duty (in Rs.)	Amount of Taxable Value claimed under RCM (in Rs.)	Amount of Taxable Value claimed under Full Exemption (in Rs.)	Total Service Tax Payable (in Rs)	Total Service Tax Paid (in Rs.)
1	2	3	4	5	6	7
1	Security / Detective	79,33,925/-	2,14,64,923/-	33,01,453.5/-	11,08,628/-	7,22,091/-



	Agency Service					
2	Manpower Recruitment/ Supply Agency Services (Housekeeping Services)	37,80,801.57/-	8,82,075/-	21,41,115/-	5,36,613/-	8,49,461/-

11.1 From the above, it appears that in case of services provided under 'Security/Detective Agency Service', the appellant have paid less amount of Service Tax than the actual amount due. Whereas, in case of services provided under 'Manpower Recruitment/ Supply Agency Services (Housekeeping Services)', they have paid higher amount of Service Tax than the amount actually due. Further, in case of both 'Security/Detective Agency Service' and 'Manpower Recruitment/ Supply Agency Services (Housekeeping Services)' they have claimed substantial amounts under full exemption, which requires examination of the relevant documents vis-à-vis the legal provisions. Further, in case of Works Contract Service, the appellant, in their ST-3 Return, have claimed Rs. 3,49,420/- as abatement and Rs. 14,75,385/- under RCM. This assessment is not contested in the impugned order. Besides that, the appellant have also not disclosed any further amount under works contract service in their appeal memorandum

12. In view of the discussions made above, I am of the considered view that although there is merit in the claim of the appellant, the same needs reconciliation with the relevant documents. As the matter requires verification of records for which the adjudicating authority is best placed to conduct such exercise. Hence, in the interest of justice, the matter is required to be remanded back to the adjudicating authority. The adjudicating authority should decide the issue of grant of exemption/ abatement to the appellant after examining the necessary documents submitted by the appellant and pass a speaking order after following the principles of natural justice.

13. Therefore, the demand of Service Tax amounting to Rs. 30,64,644/- passed by the impugned order is set aside and the matter is remanded back to the adjudicating authority for fresh adjudication considering the submissions of the appellant and examining the documents produced vis-à-vis the prevalent legal provisions, after following the principles of natural justice. The appellants are



directed to produce all relevant documents before the adjudicating authority within 15 days of receipt of this order. The appeal filed by the appellant is allowed by way of remand.

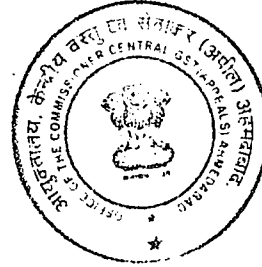
14. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

(Signature)
 (AKHILESH KUMAR)
 Commissioner (Appeals)
 Date: 30th May, 2023

Attested

(Signature)
 (Somnath Chandhary)
 Superintendent (Appeals)
 CGST Appeals, Ahmedabad



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2. The Principal Commissioner, CGST, Commissionerate - Gandhinagar.
3. The Assistant Commissioner, Central GST Division – Mehsana, Commissionerate : Gandhinagar.
4. The Assistant Commissioner (System), CGST, Appeals, Ahmedabad. (for uploading the OIA)
5. Guard File.
6. P.A. File.