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

सत्यमेव जयते

आज़ादी का अमृत महोत्सव

By SPEED POST
DIN:- 20230664SW0000163675

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/2460/2022-APPEAL /2142-46
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-048/2023-24 and 06.06.2023
(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. AC/S.R./12/ST/KADI/2022-23 dated 28.06.2022 passed by the Assistant Commissioner, CGST, Division-Kadi, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s New Shree Raj Rajeshwari Boiler Contractor (PAN-BCPPM9085H), 53, Rajmahal Raj City, Karan Nagar Road, Taluka-Kadi, Mehsana, Gujarat-382715

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 मे 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 मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम होतो रूपये 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 अपीलः-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गतः-
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 2ndfloor, 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. Registar 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 ओदश 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 हैं।

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 संषोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 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 in 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 अपीलो 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 राशिय;
(3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा ' लंबित अपील' में पहले पूर्व जमा की तुलना मेंए 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. New Shree Raj Rajeshwari Boiler Contractor, 53, Rajmahal Raj City, Karan Nagar Road, Tal: Kadi, Dist: Mehsana – 382715 (hereinafter referred to as "the appellant") against Order-in-Original No. AC/S.R./12/ST/KADI/2022-23 dated 28.06.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division: Kadi, 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. BCPPM9085HSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2014-15, it was noticed that there is difference of value of service amounting to Rs. 38,76,063.80/- during the FY 2014-15, between the gross value of service provided in the said data and the gross value of service shown in Service Tax Returns filed by the appellant for the FY 2014-15. 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. IV/16-15/TPI/PI/Batch 3C/2018-19/Gr.IV dated 25.06.2020 demanding Service Tax amounting to Rs. 4,79,081/- for the period FY 2014-15, 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 76, Section 77 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. 4,79,081/- 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 FY 2014-15. Further, (i) Penalty of Rs. 4,79,081/- 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 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 are a proprietorship firm engaged in providing Manpower recruitment or Supply service. They have obtained Service Tax Registration in the FY 2010 under the

category of Manpower recruitment agency service. The appellant were discharging their Service Tax liability under the category of Manpower Supply Service.

- The appellant had filed their ST-3 Returns for the period April-2014 to September-2014 on 12.11.2014 and for the period October-2014 to March-2015 on 24.04.2015. The appellant, while filing ST-3 Returns, shown claiming Notification No. 30/2012-ST dated 20.06.2012. However, in the particulars of value of taxable service, abated value, without gross amount of taxable service, was shown in ST-3 Returns.

- The department taken taxable value of Rs. 58,95,336/-, which is a gross value of service provided, instead of Rs. 20,19,272/- abated value.

- The show cause notice issued by the department is time barred as the same issued after normal period of 18 months and there was no misstatement or suppression of facts. Further, the show cause notice issued for the period from April-2014 to September-2014 is patently time barred as the same issued on 25.06.2020, i.e. after 5 year from the date 12.11.2014, the date of filing of ST-3 Return for the said period.

- The show cause notice was issued on the ground that the appellant had paid service tax on the value of service of Rs. 20,19,272/- instead of value of Rs. 58,95,336/-. However, demand has confirmed on the ground that the appellant have wrongly availed the exemption under Notification No. 30/2012-ST. There was no allegation with respect to admissibility of Notification No. 30/2012-ST in the show cause notice, therefore, the adjudicating authority has passed the impugned order beyond the scope of show cause notice.

- The show cause notice was issued merely on the ground that appellant paid service tax on the service value of Rs. 20,19,272/- instead of Rs. 58,95,336/-. The show cause notice does not dispute the category of service rendered by the appellant. In fact, no investigation was carried out before issuance of show cause notice and confirmation of demand on the ground of classification of service is not proper. In this regard they relied upon the decision of Hon'ble Tribunal in the case of CMS (India) Operations & Maintenance Co. (P) Ltd. V/s. CCE, Puducherry reported at 2017 (3) GSTL 164 (Tri.-Chennai) and also the following case laws.

  (a) Intelligroup Asia Pvt. Ltd. Vs. CCE, Hyderabad reported at 2016 (46) STR 679 (Tri. Bang.)
  (b) Priya Blue Ind. Ltd. Vs. CC (Prev.) reported at 2004 (172) ELT 145 (SC)

(c) United Telecom Ltd. Vs. CC, Bangalore reported at 2005 (191) ELT 1056 (Tri. Bang.)

4. Personal hearing in the case was held on 17.04.2023. Shri P. G. Mehta, Advocate, appeared on behalf of the appellant for personal hearing. He reiterated submissions made in appeal memorandum. He submitted copies of ST-3 Returns filed by the appellant for relevant period as well as a brief. He argued the case on merits as well as on limitation.

4.1 The appellant in their additional submission, produced during the course of personal hearing, inter alia reiterated submissions made in appeal memorandum.

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 2014-15.

6. It is observed that the adjudicating authority had confirmed the demand of service tax on the ground that the appellant has wrongly availed the abatement benefit under Notification No. 30/2012-ST dated 20.06.2012 and not paid the service tax on full taxable value.

7. It is also observed that the main contention of the appellant are that (i) they had filed their ST-3 Returns for the period April-2014 to September-2014 on 12.11.2014, and for the period October-2014 to March-2015 on 24.04.2015, claiming abatement under Notification No. 30/2012-ST dated 20.06.2012; (ii) the show cause notice was issued taking taxable value of Rs. 58,95,336/-, which is the gross value of service provided, instead of Rs. 20,19,272/- abated value; (iii) the show cause notice issued for the period from April-2014 to September-2014 is time barred as the same was issued on 25.06.2020, i.e., after 5 year from the date 12.11.2014, the date of filing of ST-3 Return for the said period; and (iv) the show cause notice was issued on the ground that the appellant had paid service tax on the value of service of Rs. 20,19,272/- instead of value of Rs. 58,95,336/-. However, demand has been confirmed on the ground that the appellant have wrongly availed the exemption under Notification No. 30/2012-ST. There was no allegation with respect to admissibility of Notification No. 30/2012-ST in the show cause notice, therefore, the adjudicating authority has passed the impugned order beyond the scope of show cause notice.

8. I find that in the SCN in question, the demand has been raised for the period FY 2014-15 based on the Income Tax Returns filed by the appellant. Except for the difference in value of "Sales of Services under Sales / Gross Receipts from Services" provided by the Income Tax Return when compared with the ST-3 Returns filed by the appellant for the relevant period, 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 were registered with service tax department and filed their ST-3 Returns regularly.

8.2 I find that the appellant had filed the Service Tax Returns for the FY 2014-15 and in both the Returns, they have shown that they were claiming benefit of Notification No. 30/2012-ST dated 20.06.2012 and paying service tax on 25% of the gross value. Thus, the amount of Rs. Rs. 20,19,272/- on which the appellant have paid the applicable service tax, was the "abated value", whereas the SCN has been issued by taking the same as "gross value". I also find that the said argument was put forth by the appellant before the adjudicating authority. However, without discussing the same, the adjudicating authority has

confirmed the demand of service tax. Thus, the impugned order passed by the adjudicating authority is not correct, proper and legal, being non-speaking order.

9. I also find that the appellant have also contended that the demand is barred by limitation. In this regard, I find that the last date for issue of show cause notice, even by invoking extended period, for the period April, 2014 to September, 2014 was 11th November, 2019, as the appellant had filed their ST-3 Return on 12.11.2014. Therefore, considering this fact of I find that the demand for the period April, 2014 to September, 2014 is barred by limitation as the notice was issued on 25.06.2020, beyond the prescribed period of limitation of five years. I, therefore, agree with the contention of the appellant that the demand is time barred in terms of the provisions of Section 73 of the Finance Act, 1994. Therefore, the demand on this count is also not sustainable for the period from April, 2014 to September, 2014, as the same is barred by limitation. In this regard, I also find that the adjudicating authority has not taken into consideration the issue of limitation and confirmed the demand in toto.

10. I also find that in the SCN in question, the demand has been raised for the period FY 2014-15 based on the difference between the taxable value shown in the ST-3 Returns and income from services as per data received from the Income Tax department. It is also not specified as to under which category of service, the non-levy of service tax is alleged against the appellant. The SCN has not disputed the assessment already made by the appellant in ST-3 Returns, claiming abatement / partial reverse charge payment of service tax under Notification No. 30/2012-ST dated 20.06.2012. The SCN has also not alleged that the appellant had wrongly availed the benefit of Notification No. 30/2012-ST. However, the adjudicating authority has confirmed the demand of service tax in the impugned order observing that the appellant had wrongly availed the benefit of Notification No. 30/2012-ST. Thus, the demand has been confirmed by the adjudicating authority vide the impugned order on the ground that was not raised in the SCN issued to the appellant. By raising a new ground in the course of adjudication and confirming the same, without issuance of SCN, the adjudicating authority has clearly travelled beyond the scope of the SCN issued to the appellant. I find it relevant to refer to the judgment of the Hon'ble Supreme Court in the case of Commissioner of Central Excise Vs. Gas Authority of India Ltd.= 2008 (232) ELT 7 (SC), the relevant part of the said judgment is reproduced below :

> *"7. As repeatedly held by this Court, show cause notice is the foundation of the Demand under Central Excise Act and if the show cause notice in the present case itself proceeds on the basis that the product in question is a byproduct and not a final*

product, then, in that event, we need not answer the larger question of law framed hereinabove. On this short point, we are in agreement with the view expressed by the Tribunal that nowhere in the show cause notice it has been alleged by the Department that Lean Gas is a final product. Ultimately, an assessee is required to reply to the show cause notice and if the allegation proceeds on the basis that Lean Gas is a by-product, then there is no question of the assessee disputing that statement made in the show cause notice."

10.1 A similar view as taken by the Hon'ble High Court of Madras in the case of R.Ramdas Vs. Joint Commissioner of Central Excise, Puducherry - 2021 (44) GSTL 258 (Mad.). The relevant parts of the said judgment are reproduced below :

"7. It is a settled proposition of law that a show cause notice, is the foundation on which the demand is passed and therefore, it should not only be specific and must give full details regarding the proposal to demand, but the demand itself must be in conformity with the proposals made in the show cause notice and should not traverse beyond such proposals.

.....

11. The very purpose of the show cause notice issued is to enable the recipient to raise objections, if any, to the proposals made and the concerned Authority are required to address such objections raised. This is the basis of the fundamental Principles of Natural Justice. In cases where the consequential demand traverses beyond the scope of the show cause notice, it would be deemed that no show cause notice has been given, for that particular demand for which a proposal has not been made.

12. Thus, as rightly pointed out by the Learned Counsel for the petitioner, the impugned adjudication order cannot be sustained, since it traverses beyond the scope of the show cause notice and is also vague and without any details. Accordingly, such an adjudication order without a proposal and made in pursuant of a vague show cause notice cannot be sustained."

10.2 Further, in the case of Reliance Ports and Terminals Ltd. Vs. Commissioner= 2016 (334) ELT 630 (Guj.), the Hon'ble High Court of Gujarat had held that at Para 9 of the judgment that :

"Under the circumstances, in the light of the settled legal position as emerging from the above referred decisions of the Supreme Court, that the show cause notice is the foundation of the demand under the Central Excise Act and that the order-in-original and the subsequent orders passed by the appellate authorities under the statute would be confined to the show cause notice, the question of examining the validity of the impugned order on grounds which were not subject matter of the show cause notice would not arise."

10.3 In view the above judicial pronouncements, I find that it is settled position of law that a SCN is the foundation of demand. In the instant case, I find that no SCN has been issued to the appellant demanding service tax on the basis of wrong availment of abatement by way of payment of service tax under partial reverse charge under Notification No. 30/2012-ST dated 20.06.2012. Therefore, confirmation of demand of service-tax without issuance of SCN on this issue is bad in law and, is accordingly, not legally sustainable.

11. In view of above, I hold that the impugned order passed by the adjudicating authority confirming demand of Service Tax, in respect of income received by the appellant during the FY 2014-15, is not legal and proper and deserve to be set aside on various ground as enumerated above. 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

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

Date : 06.06.2023

By RPAD / SPEED POST

To,

M/s. New Shree Raj Rajeshwari Boiler Contractor, Appellant
53, Rajmahal Raj City, Karan Nagar Road,
Tal: Kadi, Dist: Mehsana – 382715

The Assistant Commissioner, Respondent
CGST, Division Kadi,

Copy to :

1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
2) The Commissioner, CGST, Gandhinagar
3) The Assistant Commissioner, CGST, Division Kadi.
4) The Assistant Commissioner (HQ System), CGST, Gandhinagar (for uploading the OIA)
5) Guard File
6) PA file