



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
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अहमदाबाद  
अमृत महोत्सव

**By SPEED POST**

DIN:- 20230764SW000000F5D3

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/2414/2022-APPEAL/3831-28
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-058/2023-24 and 24.07.2023
(ग)	पारित किया गया / Passed By	श्री शिव प्रताप सिंह, आयुक्त (अपील) Shri Shiv Pratap Singh, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	26.07.2023
(ङ)	Arising out of Order-In-Original No. /AC/DEM/MEH/ST/Rajnikant/2021-22 dated 17.03.2022 passed by the Assistant Commissioner, CGST, Division-Mehsana, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Rajnikant Amrutlal Patel, 19/Umavilla, Opp. Golden Residency, Gandhinagar Road, Mehsana

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:-

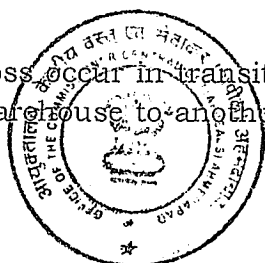
**Revision application to Government of India:**

(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, 4<sup>th</sup> 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाना ड का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

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

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

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

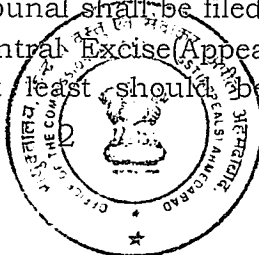
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

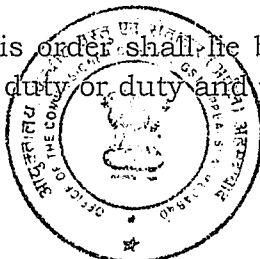
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

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

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

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

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

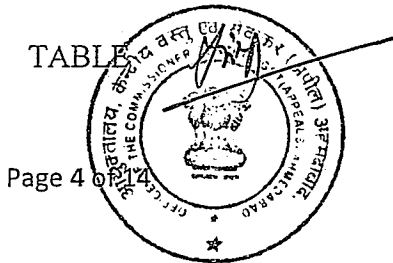


अपीलिच आदेश / ORDER-IN-APPEAL

This order arises out of an appeal filed by M/s. Rajnikant Amrutlal Patel, 19/Umavilla, Opp. Golden Residency, Gandhinagar Road, Mehsana (hereinafter referred to as the "*appellant*") against Order-In-Original No. 74/AC/DEM/MEH/ST/Rajnikant/2021-22-dated 17/03/2022 (hereinafter referred to as the "*impugned order*"), issued by Assistant Commissioner, CGST & C.Ex., Division-Mehsana, Commissionerate-Gandhinagar (hereinafter referred to as the "*adjudicating authority*").

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AMEPP7345MSD001 for providing taxable services. As per the information received through preventive section, H.Q, Gandhinagar vide DG Systems Report No. 02 & 03 discrepancies were observed in the total income declared in Income Tax Returns/26AS, when compared with Service Tax Returns of the appellant for the period F.Y. 2015-16 and F.Y. 2016-17. In order to verify the said discrepancies as well as to ascertain the fact whether the appellant had discharged their Service Tax liabilities during the period F.Y. 2015-16 and F.Y. 2016-17, letter dated 08.05.2020 was issued to them vide e-mail. The appellant did not reply. It was also observed by the jurisdictional officers that the nature of services provided by the appellant were covered under the definition of 'Service' as per Section 65B (44) of the Finance Act, 1994, and their services were not covered under the 'Negative List' as per Section 66D of the Finance Act, 1994, nor were they exempted vide the Mega Exemption Notification No. 25/2012-S.T., dated 20.06.2012 (as amended). Hence, the services provided by the appellant during the relevant period were considered taxable.

3. In the absence of any other available data for cross-verification, the Service Tax liability of the appellant for the period F.Y. 2015-16 and F.Y. 2016-17 was determined on the basis of differential value between 'Sales of Services under Sales/Gross Receipts from Services (Value from ITR)' as provided by the Income Tax department through DG Systems Report No. 02 and 03 for the F.Y. 2015-16 & F.Y. 2016-17 and the 'Taxable Value' shown in the Service Tax Returns for the relevant period as per details below:



(Amount in Rs.)

Period. (F.Y.)	Differential Taxable Value as per Income Tax Data	Rate of Service Tax [including EC, SHEC]	Demand of Service Tax
2015-16	80,88,177/-	14.5%	11,72,786/-
2016-17	00	15%	00
TOTAL	80,88,177/-		11,72,786/-

4. The appellant were issued a Show Cause Notice vide F.No. V.ST/11A-30/Rajnikant/2020-21 dated 29.06.2020 (SCN for short), wherein it was proposed to:

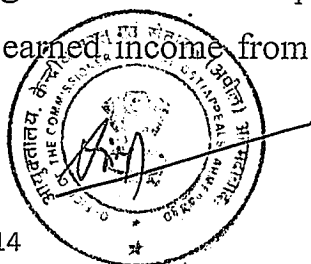
- Demand and recover Service Tax amount of Rs. 11,72,786/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 ;
- Impose penalty under Section 77(2), 77(c) and 78 of the Finance Act, 1994.

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

- Demand for Rs. 11,72,786/- (leviable on differential taxable value of Rs. 80,88,177/-) was confirmed under sub-section (2) of Section 73 of the Finance Act, 1994;
- Interest on the above confirmed amount was to be recovered under Section 75 of the Finance Act, 1994;
- Penalty amounting to Rs. 11,72,786/- was imposed under Section 78 of the Finance Act, 1994 alongwith option for reduced penalty vide clause (ii) of the second proviso to Section 78(1) of the Finance Act, 1994;
- Penalty of Rs. 10,000/- was imposed under Section 77(2) of the Finance Act, 1994;
- Penalty of Rs. 10,000/- was imposed under Section 77(1)(c) of the Finance Act, 1994.

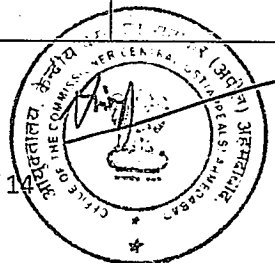
6. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal alongwith application for condonation of delay, on following grounds:

- They are proprietorship firm and carrying out business of contract work for various government organization and registered with the department. During the period F.Y. 2015-16 appellant has earned income from contract labour for waste collection from Nagarpalika.



- The SCN was issued on the basis of Income Tax return department has issued show cause notice. They submitted required details i.e Profit & Loss Account/Balance sheet etc to the adjudicating authority at the time of Personal Hearing and requested to drop the proceeding. However, the demand was confirmed without appreciating the facts of case.
- The SCN was issued without any verification by the department on the basis of data received from Income Tax department. They have regularly filed their Income Tax Returns, hence, there is no suppression of facts on part of the appellant.
- The SCN was issued under Section 73 of the Finance Act, 1994 by invoking extended period of time. However, there is no such suppression or mis-statement covered under Section 73 of finance Act and the issue was raised on the basis of difference between Income Tax return income and service tax return income and issued without any verification. They relied on the decision of the Hon'ble Apex court has in the case of *M/s. Cosmic Dye chemical Vs Collector of Cen. Excise, Bombay* [1995 (75) E.L.T. 721 (S.C.).
- Further the CBIC had issued Circular no. 1053/02/2017-CX, F.No. 96/1/2017-CX.I dated 10th March, 2017 laying down guidelines for issuance of SCN. Department has failed to prove the burden with evidence that the transaction falls in the category of suppression of facts.
- They have earned work income from Government Department and as per their understanding they are exempted from service tax or they are not liable to pay. Details of work was as per table below :

Period/ F.Y.	Amount received in Rs.	Service Receiver Organisation	Applicability of Tax
2015-16	76,40,554/-	Visnagar Nagar Palika	Work Income Government department Exempt vide Notification No 25/2012-ST dated 20/06/2012.
	4,38,458/-	Gujarat State Civil Supplier Corporation Ltd.	Work Income of Government covered under RCM
Total	80,79,012/-		

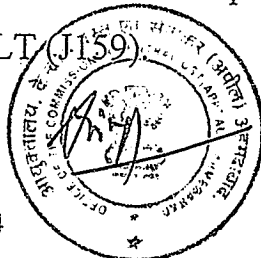


- During the relevant period they have carried out work of door-to-door collection of waste and their disposal under the area of Visnagar Nagarpalika. As per notification No 25/2012-ST dated 20/06/2012 work carried out for government is exempted and service tax on same is not applicable. The relevant clause no. 25 of notification No 25/2012-ST dated 20/06/2012 read as under :

*25. Services provided to Government, a local authority or a governmental authority by way of—*

*[(a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation;*

- They carried out the work of waste collection and disposal for Visnagar Nagarpalika. The work was carried out with the help of manpower and machineries. Visnagar Nagarpalika was primarily responsible for disposal of solid waste. The activities included collection of waste from door to door site and their disposal at different location. The appellant were appointed for said work and were directed to carry out the work as per the norms of Nagarpalika. A copy of work order was submitted. Hence it can be concluded that such services were out of the purview of the service tax and service tax is not applicable on it. They also submitted the relevant ledger and supporting documents.
- They also carried out the work of Gujarat State Supply Corporation Ltd which is a body corporate. They supplied contract labour required to carry out work at site. Gujarat State Supply Corporation is a body corporate and accordingly service tax is covered under the Reverse Charge Mechanism in terms of Notification No 30/2012-ST Dated 20/06/2012.
- As they did not have any intention to evade Service Tax, imposition of penalty under section 70, 77, 78 of the Finance Act, 1994 is not applicable.
- The demand confirmed by the Adjudicating Authority is otherwise hit by limitation of time and is badly time barred for more than one reason.
- They relied upon on the decision of the Hon'ble Supreme Court in the Hindustan steel v State of Orissa 1978 ELT (J159)



- They contended that they are not liable to pay the amount of service tax demanded alongwith interest and penalty.

7. Personal Hearing in the case was held on 18.05.2023. Shri Arpan Yagnik, Chartered Accountant, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in the application for condonation of delay in filing the appeal. He also re-iterated the submissions made in the appeal memorandum. He also stated that he would submit Form 26 AS for the relevant period as additional submission.

8. It is observed from the records that the present appeal was filed by the appellant on 11.07.2022 against the impugned order dated 17.03.2022, which was received by the appellant on 29.04.2022.

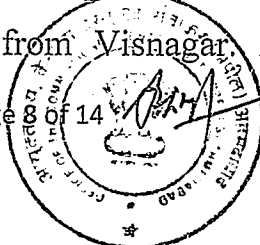
8.1 It is also observed that the Appeals preferred before the Commissioner (Appeals) are governed by the provisions of Section 85 of the Finance Act, 1994. The relevant part of the said section is reproduced below :

*“(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 received the assent of the President, relating to service tax, interest or penalty under this Chapter:*

*Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.”*

8.2 As per the above legal provisions, the period of two months for filing appeal before the Commissioner (Appeals) for the instant appeal ends on 28.06.2022 and further period of one month, within which the Commissioner (Appeals) is empowered to condone the delay upon being satisfied with the sufficient reasons shown by the appellant, ends on 27.07.2022. This appeal was filed on 11.07.2022, i.e after a delay of 13 days from the stipulated date of filing appeal, and is within the period of one month that can be condoned.

8.3 In their application for Condonation of delay in filing the appeal, they submitted that the demand pertained to the period F.Y. 2015-16 and they had to collect details for the said period from Visnagar. Also, they were facing



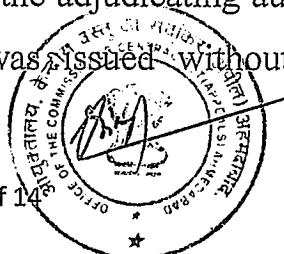


problems in payment of pre-deposit. On account of these problems the delay in filing of the appeal had occurred. These reasons were also explained by them during the course of personal hearing, the grounds of delay cited and explained by the appellant appeared to be genuine, cogent and convincing. Considering the submissions and explanations made during personal hearing, the delay in filing appeal is condoned in terms of proviso to Section 85 (3A) of the Finance Act, 1994.

9. On account of change in the appellate authority, personal hearing was again held on 23.06.2023. Shri Arpan Yagnik, Chartered Accountant, appeared on behalf of the appellant for the hearing. He submitted that they provided sanitation services to Visnagar Nagarpalika which are exempted vide Sr.No. 25 of Notification No. 25/2012-ST dated 20.06.2012. They also provided labour supply services to Gujarat State Civil Supplies Corporation Limited which is covered under RCM. Therefore, the liability of the appellant towards Service Tax was NIL. However, the adjudicating authority has passed ex-parte order without any verification. Therefore, they requested to set aside the impugned order. They submitted a copy of Form 26AS for the period F.Y. 2015-16 and copies of work order of Visnagar Nagarpalika, approval of quotation from Mehsana Municipality and Certificate of Visnagar Nagarpalika.

10. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during the personal hearing, and materials available on records. The issue before me for decision is whether the demand of Service Tax amounting to Rs. 11,72,786/- confirmed alongwith interest and penalty vide the impugned order, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16.

10.1 It is observed from the case records that the appellant is registered with Service Tax department. However, the SCN was issued entirely on the basis of data received from Income Tax department and without classifying the Services rendered by the appellant and the impugned order was issued without causing any further verifications in this regard. It is also observed that the appellants have submitted certain documents before the adjudicating authority which were not considered. The impugned order was issued without affording proper



opportunities for Personal Hearing to the appellants relying on the reply of the appellant and in violation of the principles of natural justice.

10.2 I find it relevant here, to refer to the CBIC Instruction dated 26.10.2021, wherein at Para-3 it is instructed that:

*Government of India  
Ministry of Finance  
Department of Revenue  
(Central Board of Indirect Taxes & Customs)  
CX & ST Wing Room No.263E,  
North Block, New Delhi,  
Dated- 21<sup>st</sup> October, 2021*

*To,  
All the Pr. Chief Commissioners/Chief Commissioners of CGST & CX Zone, Pr.  
Director General DGGI*

*Subject:-Indiscreet Show-Cause Notices (SCNs) issued by Service Tax  
Authorities- reg.*

*Madam/ Sir,*

...

*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 as well as the impugned order has been passed indiscriminately and mechanically without application of mind, and is vague, issued in clear violation of the instructions of the CBIC discussed above. As the impugned order was issued without verification and without appreciation of the submissions as well as in violation of the principles of natural justice the same is a non-speaking order and liable to be set aside.

11. I find that, the appellants have submitted that during the period F.Y. 2015-16 they have provided Cleaning and sanitation services to Visnagar Nagarpalika, Visnagar, Mehsana Municipalty, Mahesana and M/s Gujarat State Civil Supplies Corporation Limited, Mehsana. The Ledger account submitted by them also reflect that during the relevant period they have provided services amounting to Rs. 80,79,012/- to these service receivers. This fact is further



corroborated from the figures reflected in Form 26 AS for the F.Y. 2015-16 submitted by them. The details are tabulated as per table below :

Details for the F.Y. 2015-16	Value of Services provided as per Ledger Account (in Rs.)	Amount received under Section 194C or 194J of the IT Act, 1961 as per Form 26 AS (in Rs.)
1	2	3
Quantum of Services provided to Visnagar Nagarpalika, Visnagar	76,40,554/-	76,40,554/-
Quantum of Services provided to Mahesana Municipality, Mahesana	00	9,165/-
Quantum of Services provided to Gujarat State Civil Supplies Corporation Limited, Mehsana	4,38,458/-	4,38,458/-
Total	80,79,012/-	80,88,177/-

Upon examining the above figures with the taxable value considered vide the SCN and the impugned order, I find that the taxable value considered was Rs. 80,88,177/- and the amount received under Section 194C/194J of the IT Act, 1961 as per Form 26 AS also comes to Rs. 80,88,177/-.

11.1 It is further observed that the appellant have claimed Exemption from Service Tax under in terms of Sr. No. 25 of Notification No. 25/2012-ST dated 20.06.2012 in respect of the services provided to Mahesana Municipality and Visnagar Nagarpalika, as both are Government bodies and they have provided services falling under Sanitation conservancy and solid waste management to these entities. In this regard, the relevant provisions of the said notification is reproduced below:

Government of India  
Ministry of Finance  
(Department of Revenue)

Notification No. 25/2012-Service Tax  
New Delhi, the 20<sup>th</sup> June, 2012

G.S.R.....(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 number 12/2012- Service Tax, dated the 17<sup>th</sup> 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 17<sup>th</sup> March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services leviable thereon under section 66B of the said Act, namely:-

...  
25. Services provided to Government, a local authority or a governmental authority by way of -

(a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or  
(b) repair or maintenance of a vessel or an aircraft.  
...



11.2 It is further observed from the documents submitted by the appellant that during the relevant period they have provided Sanitation and Cleaning related Services to Mahesana Municipality and Visnagar Nagarpalika, Visnagar and both the entities fall under the ambit of "*Government, a local authority or a governmental authority*". The quantum of service amounting to Rs. 76,49,719/- provided to these two entities has already been discussed supra. Hence, I find force in the argument of the appellant that, the services provided by them to Mahesana Municipality and Visnagar Nagarpalika, Visnagar during the F.Y. 2015-16 merits exemption in terms of Sr. No. 25 of Notification No. 25/2012-ST dated 20.06.2012.

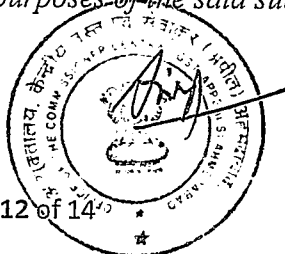
11.3 It is further observed that during the period F.Y. 2015-16, the appellants have provided Labour Supply services (Manpower recruitment and supply agency services) amounting to Rs.4,38,458/- to M/s Gujarat State Civil Supplies Corporation Limited, Mehsana. This is also evident from the Form 26AS as discussed supra. Further, M/s Gujarat State Civil Supplies Corporation Limited, Mehsana being a 'Body Corporate' the appellants have claimed the benefit of 100% Reverse Charge Mechanism (RCM) in respect of the said services provided to M/s Gujarat State Civil Supplies Corporation Limited, Mehsana in terms of Sr.No.8 of Notification No 30/2012-ST dated 20.06.2012, as amended. In order to have a better understanding of the provisions of the Notification, relevant portion is 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

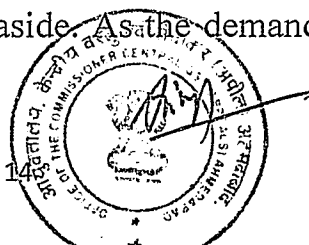
Sr. No	Description of Service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
...	...	...	...
8	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose	NIL	100 %
...	...	...	...

...

11.4 I further find that, M/s Gujarat State Civil Supplies Corporation Limited, Mehsana is a Body Corporate and the documents produced by the appellant confirms that they are Proprietorship firm. Documents submitted also indicate that they have provided Labour supply services (Manpower Recruitment nad Supply Agency Service) to M/s Gujarat State Civil Supplies Corporation Limited, Mehsana amounting to Rs. 4,38,458/- during the period F.Y. 2015-16. Examining the provisions of Sr.No.8 of Notification No 30/2012-ST dated 20.06.2012, as amended, with the facts and circumstances of the case, I find that the appellants are eligible for the benefit of 100% RCM under the said Notification.

12. In view of the discussions carried out in the foregoing, I am of the considered opinion that the impugned order is a non-speaking order issued in violation of the principles of natural justice and is liable to be set aside. Further, the services provided by the appellants amounting to Rs. 80, 88, 177/- during the period F.Y. 2015-16 merit exemption from payment of Service Tax by virtue of Sr. No. 25 of Notification No. 25/2012-ST dated 20.06.2012 and Sr.No.8 of Notification No 30/2012-ST dated 20.06.2012, as amended. Therefore, the demand of Service Tax amounting to Rs. 11,72,786/- confirmed vide the impugned order is not sustainable on merits and is liable to be set aside.

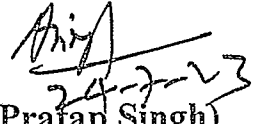
13. Accordingly, the demand of Service Tax amounting to Rs. 11,72,786/- confirmed vide the impugned order is set aside. As the demand fails to sustain




interest and penalties under Section 78 of the Finance Act, 1994 do not survive. Hence, the appeal filed by the appellants is allowed to this extent.

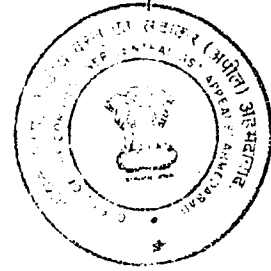
13.1 However, I also find that the appellants were registered under Service Tax and have not filed their Service Tax Returns (ST-3) for the period F.Y. 2015-16. This fact is not disputed by the appellant. As, the penalty for non-filing of mandatory periodical returns flows from the statute. Therefore, the portion of the impugned order imposing Penalty under Section 77(c) of the Finance Act, 1994 is upheld, although in the facts and circumstances of the case I order the quantum to be reduced from maximum quantified amount of Rs.10,000/- to Rs.2,000/-.

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.

  
(Shiv Pratap Singh)  
Commissioner (Appeals)

Date: 24.07.2023

Attested  
  
(Somnath Chaudhary)  
Superintendent (Appeals)  
CGST, Appeals, Ahmedabad.



BY RPAD / SPEED POST

To,  
M/s. Rajnikant Amrutlal Patel, (M/s Sai Enterprise)  
19 / Umavilla,  
Opp. Golden Residency,  
Gandhinagar Road, Mehsana, Gujarat.

Copy to: -

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