



सत्यमेव जयते

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

By SPEED POST

DIN:- 20230864SW000088158B

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| (क) | फाइल संख्या / File No. | GAPPL/COM/STP/1803/2022-APPEAL GAPPL/COM/STP/2663/2022-APPEAL / 11868-72 |
| (ख) | अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date | AHM-EXCUS-003-APP-078 to 079/2023-24 and 25.08.2023 |
| (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 | 28.08.2023 |
| (ङ) | Arising out of Order-In-Original No. 152/AC/DEM/MEH/ST/Kiran Construction/2021-22 dt. 01.04.2022 & Order-In-Original No. 80/AC/DEM/MEH/ST/Kiran Construction/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 Kiran Construction, 2, Motisagar Society, Nr. Railway Crossing, Visnagar Link Road, Mehshana Industrial Estate, Gujarat - 384002. |

कोई व्यक्ति इस अपील-आदेश से असंतोष 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:-

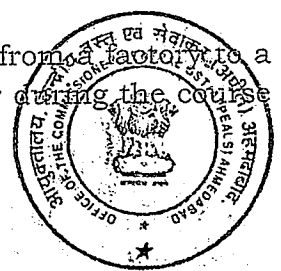
Revision application to Government of India:

(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 से 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 हो तो 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.

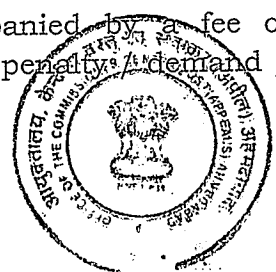
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 और 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 'एपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

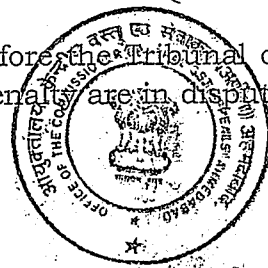
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

This order arises out of the two (02) appeals filed by M/s. Kiran Construction, 2, Motisagar Society, Visnagar Link Road, Mehsana Industrial Estate, Gujarat - 384002 [hereinafter referred to as the appellant] against OIO No.152/AC/DEM/MEH/ST/Kiran Construction/2021-22 dated 01.04.2022 and OIO No. 80/AC/DEM/MEH/ST/Kiran Construction/2022-23 dated 20.06.2022 [hereinafter referred to as the impugned orders] passed by Assistant Commissioner, Central GST, Division : Mehsana, Commissionerate : Gandhinagar [hereinafter referred to as the adjudicating authority]. Since the issue involved is same in both the appeals viz. GAPPL/COM/STP/1803/2022 and GAPPL/COM/STP/2663/2022, they are being decided together vide this OIA.

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. ABHPM8548ST001 and are engaged in providing taxable services. As per the information received from the Income Tax department, discrepancies were observed in the total income declared by the appellant in their ST-3 Returns when compared with their Income Tax Return (ITR-5) and details of Form 26 AS for the period F.Y. 2014-15, F.Y. 2015-16 and F.Y. 2016-17. Accordingly, email dated 08.05.2020 and 19.06.2020 were forwarded to the appellant calling for the details of services provided during the period F.Y. 2014-15, F.Y. 2015-16 and F.Y. 2016-17. The appellant did not submit any reply. However, the jurisdictional officers considered that the services provided by the appellant during the relevant period were taxable under Section 65 B (44) of the Finance Act, 1994 and the Service Tax liability for the F.Y. 2014-15, F.Y. 2015-16 and F.Y. 2016-17 was determined on the basis of value of 'Sales of Services' under Sales/Gross Receipts from Services (Value from ITR) and Form 26AS for the relevant period as per details below :

| Sr. No. | Period (F.Y.) | Differential Taxable Value as per Income Tax data vis-à-vis ST-3 Returns (in Rs.) | Rate of Service Tax | Service Tax short-paid / not-paid (in Rs.) |
|---------|---------------|---|---------------------|--|
| 1 | 2014-15 | 44,95,048/- | 12.36% | 5,55,587/- |
| 2 | 2015-16 | 36,33,551/- | 14.5% | 5,26,865/- |
| 3 | 2016-17 | 32,25,756/- | 15% | 48,38,630/- |

2.1 The appellant was issued Show Cause Notice from F.No. IV/16-13/TPI/PI/Batch3C/2018-19/Gr.II/3596 dated 25.06.2020 (SCN-1 for short) for the period F.Y. 2014-15, wherein it was proposed to recover service tax amounting to



Rs.5,55,587/- for the period F.Y.2014-15 under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. Imposition of penalty was proposed under Section 77 (2), 77C and 78 of the Finance Act, 1994.

2.2 Another Show Cause Notice from F.No. V.ST/11A-38/Kiran/2020-21 dated 30.06.2020 (SCN-2 for short) was issued to the appellant for the period F.Y. 2015-16 and F.Y. 2016-17, wherein it was proposed to recover service tax amounting to Rs. 10,10,728/- under Section 73 (1) of the Finance Act, 1994, along with interest under Section 75 of the Finance Act, 1994. Imposition of penalty was proposed under Section 77 (2), 77C and 78 of the Finance Act, 1994 .

3. SCN-1 was adjudicated vide OIO No.152/AC/DEM/MEH/ST/Kiran Construction/2021-22 dated 01.04.2022 which was passed ex-parte. The demand for service tax was confirmed along with interest. Penalty equivalent to the service tax confirmed were also imposed under Section 78 of the Finance Act, 1994 alongwith option for reduced penalty under proviso to clause (ii), alongwith other penalties.

3.1 SCN-2 was adjudicated vide impugned order (OIO No. 80/AC/DEM/MEH/ST/Kiran Construction/2022-23 dated 20.06.2022). Considering the submissions of the appellant demand for service tax amounting to Rs. 7,37,763/- was confirmed along with interest. Penalty equivalent to the service tax confirmed was imposed under Section 78 of the Finance Act, 1994 alongwith option for reduced penalty under proviso to clause (ii). Penalty amounting to Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994 and Penalty @ Rs.200/- per day till the date of compliance or Rs. 10, 000/- whichever is higher under the provisions of Section 77(1)(c) of the Finance Act, 1994. Demand of service tax amounting to Rs. 2,72,965/- was dropped.

3. Being aggrieved with the impugned orders, the appellant have filed the instant appeals on the following grounds :

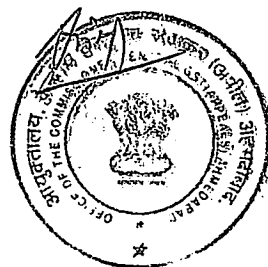
- (i) The appellant are a Proprietorship firm registered under service tax and engaged in providing 'Works Contract Service' i.e Civil Construction work. During the relevant period they have filed their Service Tax Return (ST-3) and have declared turnover as per table below



| Sr. No | Period | Declared Turnover as per ST-3 Return. |
|--------|--------------|---------------------------------------|
| 1. | F.Y. 2014-15 | Rs. 2,13,09,960/- |
| 2. | F.Y. 2015-16 | Rs. 2,15,75,355/- |
| 3. | F.Y. 2016-17 | Rs. 2,75,44,830/- |

The have paid Service Tax as per the above declared taxable values.

- (ii) The adjudicating authority has erred both in law and on facts. The demand was confirmed by wrongly invoking the extended period of limitation as there was no fraud, collusion or willful misstatement or suppression of facts in their case. Further, the impugned order has failed to establish the ingredients of invoking the extended period.
- (iii) Regarding SCN-2, the SCN was issued on 25.06.2020, i.e after expiry of 30 months period after filing of the ST-3 Return. Therefore the SCN itself is time barred. Further, the adjudicating authority has failed to consider the fact that an amount of Rs. 31,48,061/- was exempted from Service Tax in terms of Notification No. 25/2012-ST dated 20.06.2012 vide impugned order dated 01.04.2022. However, the same adjudicating authority has accepted the fact of exempted services in respect of the same service receiver and extended the benefit vide impugned order dated 20.06.2022.
- (iv) Penalty was wrongly imposed in terms of Section 78 of the Finance Act, 1994 as there was no suppression of facts. Similarly, Penalty imposed under Section 77 of the Finance Act, 1994 was incorrect as they have never failed to furnish any information to the department.
- (v) They submitted copies of Audited Financial statement for the period F.Y. 2015-16 and F.Y. 2016-17; copy of Reconciliation statement for the period F.Y. 2014-15, F.Y. 2015-16 and F.Y. 2016-17. Copy of Work Order from the Commissionerate of Health, Gandhinagar in respect of services provided by them to the Project Implementation Unit falling under the said office. Copy of Ledger account of Total turnover and Service Tax liability for the period F.Y. 2014-15, F.Y. 2015-16 and F.Y. 2016-17. Copies of Work Orders received from the Gujarat Water Supply and Sewerage Board (GWSSB), Govt. of Gujarat. Copies of work orders received from the Gujarat Police Housing Corporation Limited (GPHCL), Gandhinagar. Copies of work orders received from M/s ONGC Limited. Copy of work order received from M/s Engineering Professional Co. Pvt. Limited (EPCO), Surat.



4. Personal hearing in case of both the appeals was held on 04.08.2023. Shri Daxesh M. Thakkar, Advocate, appeared on behalf of the appellant for hearing. He reiterated the submissions made in the appeal memorandum and the additional submission. He submitted that they have provided Works Contract Services to General Hospital, Mehsana and to GWSSB. At Para-23 of the impugned order dated 20.06.2022 the adjudicating authority has accepted said fact. However, at Para-24 of the said impugned order he has interpreted wrongly, as the services provided were covered under exemption vide Sr.No. 12€ of the Mega exemption Notification No. 25/2012-ST dated 20.06.2012 and not under Sr.No. 12(a) of the said notification as wrongly assumed by the adjudicating authority. They also submitted that the value taken from Form 26AS was factually inclusive of Service Tax. If all the submissions of the appellant are taken into account the tax liability is already discharged and ST-03 Returns were correctly filed. In view of the same he requested to set aside the impugned order.

5. I have gone through the facts of the case, submissions made in the Appeal Memorandum, additional submissions, submissions made during personal hearing and materials available on records. The issue before me for decision is whether the demand of Service Tax confirmed alongwith interest and penalties vide both the impugned orders in the fact and circumstances of the case is legal and proper or otherwise. The demand pertains to the period F.Y. 2014-15, F.Y. 2015-16 and F.Y. 2016-17.

6. It is observed that the appellant are Proprietorship firm engaged in providing 'Works Contract Service' (mainly related to Civil Construction work) and are registered with Service Tax. During the period F.Y. 2014-15, F.Y. 2015-16 and F.Y. 2016-17 they have filed their ST-3 returns and paid Service Tax. However both the SCN's were issued on the basis of data received from Income Tax department without classifying the nature of services in the SCN.

7. 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.263
North Block, New Delhi.



Dated- 21st 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 both the SCNs were issued indiscriminately and mechanically and is vague, issued in clear violation of the instructions of the CBIC discussed above. It is further observed that demand of service tax for the period F.Y. 2014-15 was confirmed vide the impugned order No. 152/AC/DEMMEH/ST/Kiran Construction/2021-22 dated 01.04.2022 which was passed ex-parte in clear violation of the principles of natural justice.

8. It is further observed from the documents submitted by the appellant that they have filed ST-3 Returns and have declared to have provided services to be covered under 'Works Contract Service', 'Construction services other than residential complex including commercial/industrial buildings or civil structures', 'Site formation Service' and 'Transport of goods by road/ Goods Transport Agency(GTA) service'. They have also declared the GTA services received by them and paid Service Tax on RCM basis as Service receivers.

8.2 It is observed that the adjudicating authority has confirmed demands of Service Tax in both the impugned order under Section 73(1) of the Finance Act, 1994 invoking the extended period of limitation. In case of SCN-1, I find that the ST-3 Returns for the period 2014-15 was filed on 25.04.2015 and the SCN was issued on 25.06.2020 i.e after a period of more than 05 years instead of the stipulated time limit of 30 months. Further, in case of SCN-2, the ST-3 Returns for the period 2016-17 was filed on 25.04.2017 and the SCN was issued on 30.06.2020, which



shows that the SCN was issued after a period of 38 months instead of the stipulated period of 30 months. These facts render both the SCN's are barred by limitation, incorrect and legally unsustainable.

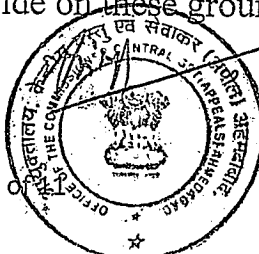
8.3 It is further observed that the appellants have filed their ST-3 Returns for the relevant period and their assessment was not disputed by the department. This implies that the appellant have made complete disclosures before the department and the department was aware about the activities being carried out by the appellant and these facts are not disputed. However, the demand of service tax was confirmed vide both the impugned orders one of which was passed ex-parte, invoking the extended period of limitation in terms of Section 73 (1) of the Finance Act, 1994. In this regard it is relevant to refer the decision of the Hon'ble Supreme Court of India in the case of *Commissioner v. Scott Wilson Kirkpatrick (I) Pvt. Ltd. - 2017 (47) S.T.R. J214 (S.C.)*], wherein the Hon'ble Court held that "...ST-3 Returns filed by the appellant wherein they Under these circumstances, longer period of limitation was not invocable".

8.4 Further, the Hon'ble High Court of Gujarat in the case of *Commissioner v. Meghmani Dyes & Intermediates Ltd. reported as 2013 (288) ELT 514 (Guj.)* ruled that "if, prescribed returns are filed by an appellant giving correct information then extended period cannot be invoked".

• I also rely upon the decision of various Hon'ble Tribunals in following cases :

- (a) *Aneja Construction (India) Limited v. Commissioner of Service Tax, Vadodara* [2013 (32) S.T.R. 458 (Tri.-Ahmd.)]
- (b) *Bhansali Engg. Polymers Limited. v. CCE, Bhopal* [2008 (232) E.L.T. 561 (Tri.-Del.)]
- (c) *Johnson Matthey Chemical India P. Limited v. CCE, Kanpur* [2014 (34) S.T.R. 458 (Tri.-Del.)]

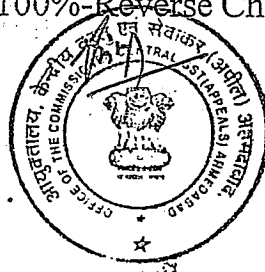
8.5 In terms of the above judicial pronouncements, I find that the impugned orders were passed in clear violation of the settled law and are therefore legally incorrect and unsustainable. Impugned order dated 01.04.2020 being passed ex-parte, the violations of principles of natural justice is also apparent. Therefore, I find that both the impugned orders are liable to be set aside on these grounds alone.



9. It is observed that as per the Form 26 AS submitted by the appellant during the period F.Y. 2014-15 they have provided services amounting to Rs. 2,22,86,636/- to M/s Oil and Natural Gas Commission Limited (ONGC) and services amounting to Rs. 31,48,061/- to the Project Implementation Unit (PIU). Documents submitted by them also confirm that PIU is under the Commissionerate of Health, Government of Gujarat state. The appellants contended that these facts were submitted by them before the adjudicating authority, but the same were not considered. I find force in the argument of the appellant that, services provided to PIU, merit exemption in terms of Sr.No.12 (e) of Notification No. 25/2012-ST dated 20.06.2012. From the reconciliation statement submitted by the appellant it is also apparent that they have paid Service Tax for the remaining amount after considering the exemption. As they have filed their ST-3 Returns for the period and their assessment was not under dispute, therefore demand raised for the period F.Y. 2014-15 vide SCN-1 and confirmed vide impugned order dated 01.04.2022 is liable to be set aside.

10. I find that as per Form-26AS, during the period F.Y. 2015-16 and F.Y. 2016-17 the appellants have provided services to Gujarat State Police Housing Corporation Ltd. (GSPHCL), Gujarat Water Supply and Sewerage Board (GWSSB), ONGC, Public Health Works Division, Sardar Sarovar Narmada Nigam Limited (SSNNL), Engineering Professional Co. Pvt. Ltd. and PIU. As contended by them the services provided to GWSSB, Public Health Works Division, Engineering Professional Co. Pvt. Ltd. and PIU merits exemption from Service Tax in terms of Notification No. 25/2012-ST dated 20.06.2012. Examining the provisions of the said notification with the facts of the case I find that the appellants are eligible for exemption vide Sr.Nos. 12 (e) and 25 (a) of Notification No. 25/2012-ST dated 20.06.2012 on the services provided to the above Government Companies/Government work as claimed by them.

11. It is observed from the copy of ST-3 Returns for the relevant period submitted by the appellant, that they have classified the services provided by them under 03 different categories. For the services classified under 'Construction services other than residential complex, including commercial/ industrial buildings or civil structures' they have not claimed any exemption. For the services classified under 'Transport of goods by road/Goods transport agency service' they have claimed and availed the benefit of payment of Service Tax on 100%-Reverse Charge Mechanism



(RCM) in terms of Sr.No.7 of Notification No. 26/2012-ST dated 20.06.2012. In respect of Services classified under 'Works Contract Service' they have claimed and availed the benefit of Partial Reverse Charge mechanism (50-50) in terms of Sr.No.9 Notification No. 30/2012-ST dated 20.06.2012. These facts are not disputed by the department, which further confirms that the assessment of the appellant submitted vide their ST-3 Returns were accepted by the department.


11.1 I further find that the adjudicating authority has confirmed the demand of service tax amounting to Rs. 7,37,763/- as discussed at Para-30 and 31 of the impugned order. Upon analysing the same in light of the abatement/exemptions claimed and availed by the appellant vide their ST-3 Returns I find that the adjudicating authority has failed to extend the benefit of abatement/exemptions while arriving at the demand. It is further observed from the reconciliation statement submitted by the appellant that upon extending the benefit of abatement/exemptions eligible to the appellant during the period F.Y. 2015-16 and F.Y. 2016-17 the demand of service tax is nullified.

12. In view of the above discussions, I am of the considered view that the demand for service tax amounting to Rs. 5,55,587/- and Rs.7,37,763/- confirmed vide both the impugned orders along with interest and penalty are liable to be set aside being unsustainable both on grounds of law as well as on merits. As the demand fails to sustain, the question of interest and penalty does not arise.


13. Accordingly, both the impugned orders dated 01.04.2022 and 22.06.2022 are set aside and the appeal filed by the appellants are allowed.

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

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


(Shiv Pratap Singh)
Commissioner (Appeals)
Date: 21 August, 2023.

Attested:


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



BY RPAD / SPEED POST

To

M/s Kiran Construction,
2, Motisagar Society,
Visnagar Link Road,
Mehsana Industrial Estate,
Mehsana, Gujarat - 384002

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Gandhinagar.
3. The Deputy/Asistant Commissioner, Central GST, Division-Mehsana, Commissionerate – Gandhinagar
4. The Assistant Commissioner (HQ System), CGST, Gandhinagar.
(for uploading the OIA)

✓ 5. Guard File.

6. P.A. File.

