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

आज़ादी का अमृत महोत्सव

By SPEED POST

DIN:- 20230864SW0000444A88

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/53/2023-APPEAL /4947 -51
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-082/2023-24 and 28.08.2023
(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	29.08.2023
(ङ)	Arising out of Order-In-Original No. AC/S.R./35/ST/KADI/2022-23 dated 29.09.2022 passed by the Assistant Commissioner, CGST, Division-Kadi, Gandhinagar Commissionerate.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Shri Pankajkumar Parsottambhai Patel, Prop. of M/s Khodiyar Engineering Works, C-52, Ayodhyanagar Society, Nani Kadi Road, B/h Ramji Mandir, Kadi, Mehsana, Gujarat.

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 पूवोक्त 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 ड्यूटी 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 मनमले 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) लियां 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."

अपीलियआदेश / ORDER-IN-APPEAL

The present appeal has been filed by Shri Pankajkumar Parsottambhai Patel Proprietor of M/s. Khodiyar Engineering Works, C-52, Ayodhyanagar Society, Nani Kadi Road, B/h Ramji Mandir, Kadi, Mehsana, Gujarat (hereinafter referred to as the appellant) against Order in Original No. AC/S.R./35/ST/KADI/2022-23 dated 29.08.2022 [hereinafter referred to as the "*impugned order*"] passed by the Assistant Commissioner, CGST, 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 PAN – APOPP1438A and were engaged in providing taxable services without holding Service Tax Registration. As per the information received from Income Tax Department indicated that in the Income Tax Returns (ITR) / TDS Returns filed by appellant for the period F.Y. 2015-16, the value of sale of service declared was more than Service Tax Exemption limit of Rs. 10 Lakhs in terms of Notification No. 33/2012-ST dated 20.06.2012. Documents viz. Balance Sheet, Profit & Loss Account, Income Tax Returns, Form-26 AS and Service Tax Ledger for the F.Y. 2015-16 were called for from the appellants for further verification, vide letters dated 16.03.2021 & 22.03.2021. They did not file any reply.

2.1 The jurisdictional officers construed that the services rendered by the appellants were taxable in terms of Section 66B of the Finance Act, 1994, their services were not covered under the negative list contained in Section 66D of the Finance Act, 1994. Show Cause Notice F.No. GEXCOM/ADJN/ST/676/2021-CGST-DIV-KADI-COMMRTE-GADNHINGAR dated 26.03.2021 (in short SCN) was issued to the appellant, wherein it was proposed to demand and recover service tax amounting to Rs.2,04,572/- under the proviso to Section 73 (1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994. It was also proposed to impose penalties under Section 70, 77 and 78 of the Finance Act, 1994.

3. The SCN was adjudicated ex-parte vide the impugned order wherein :

- demand of Service Tax amounting to Rs.2,04,572/- was confirmed under Section 73 (1) of the Finance Act, 1994 alongwith interest under Section 75;

- Penalty amounting to Rs.2,04,572/- was imposed under Section 78 of the Finance Act, 1994 alongwith option for reduced penalty under proviso to clause (ii).
- Penalty of Rs. 10,000/- was imposed under Section 77 of the Finance Act, 1994;
- Penalty of Rs. 20,000/- was imposed under Section 70 of the Finance Act, 1994;

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

- The Appellant is engaged in fabrication of various items of Iron and steel and having PAN No.APOPP1438A allotted by the Income tax department, that the said activities is considered as 'Works Contract' as defined in section 65B(54) of the Finance Act,1994 and is a declared service as specified in section 66(E)(h) of the Finance Act,1994 and is taxable service. For the purpose of service tax the of value of such service is governed in terms of Rule 2A(ii) of Service Tax (Determination of value) Rules,2006. The taxable value of the appellant was less than the exemption limit of Rs. 10 Lakhs stipulated in Notification No.33/2012-ST, and accordingly they are not liable to pay service tax, hence, they have not obtained Service tax Registration and not filed ST-3 returns.

- The SCN was issued on the basis of Income of Rs. 14,10,840/- declared in ITR for the year F.Y. 2015-16 without ascertaining the correct nature of activity carried out by the appellant. The said SCN was decided ex-parte against the appellant vide impugned Order. the Impugned Order has been passed in ignorance and/or without fully appreciating the facts, relevant to the present proceedings and contrary to the applicable legal provisions and the settled law on the legal issues involved and is in violation of principle of natural justice. The Impugned Order is therefore, bad in law and deserves to be set aside.

- The appellant did not receive any letters scheduling the dates of personal hearing. Under the circumstances the appellant could not represent their case before the adjudicating authority. Under the circumstances the impugned

order issued on ex-parte basis is in gross violation of principle of Natural Justice is not sustainable under the law.

- For the year 2015-16, the department considered Rs. 14,10,840/- as the taxable value on which service tax @ 14.5% worked out to Rs. 2,04,572/- and the same is confirmed against the appellant. The activities of the appellant are covered under 'works contract' and defined vide Section 65B(54) of the Finance Act,1994. The relevant portion is reproduced below :

> *65B(54) "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;*

Further, Section 66E(h) provides that;

> *SECTION [66E. Declared services. — The following shall constitute declared services, namely :—*
> *(h) service portion in the execution of a works contract;*

Conjoint reading of Section 65B(54) and Section 66E(h) of the Finance Act,1994 reveals that the activities of the appellant is a declared service and only service portion in execution of such works contract is liable to service tax in terms of Section 66B of the Finance Act,1994.

- For deriving method of calculation of Service tax portion and the value for the purpose of charging service tax is prescribed in Rule 2A of Service Tax (Determination of Value) Rules, 2006, which provides that;

> ***RULE [2A. Determination of value of service portion in the execution of a works contract.*** *— Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely :-*
> *(i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods [or in goods and land or undivided share of land, as the case may be] transferred in the execution of the said works contract.*
> ***Explanation.*** *- For the purposes of this clause,-*
> *(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;*
> *(b) value of works contract service shall include, -*
> *(i) labour charges for execution of the works;*
> *(ii) amount paid to a sub-contractor for labour and services;*
> *(iii) charges for planning, designing and architect's fees;*

(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;

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

(vi) cost of establishment of the contractor relatable to supply of labour and services;

(vii) other similar expenses relatable to supply of labour and services; and

(viii) profit earned by the service provider relatable to supply of labour and services;

(c) where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause;

(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely :-

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

[Provided that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty per cent. of the total amount charged for the works contract.]

[(B) in case of works contract, not covered under sub-clause (A), including works contract entered into for, -

(i) maintenance or repair or reconditioning or restoration or servicing of any goods; or

(ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property,

service tax shall be payable on seventy per cent. of the total amount charged for the works contract.]

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

(a) "original works" means-

(i) all new constructions;

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

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

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

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

(ii) the value added tax or sales tax, if any, levied thereon :

- Here it is pertinent to mention that the items fabricated by the appellant are primarily structures of Iron and steel and is a original works. This being the case the value for the purpose of charging service tax has to be considered as an abated value of 40% of the contract value.

- From the Profit and loss account, the abated value @ 40% for the year 2015-16 is worked out to as under.

Year	Income as per P & L	40% abated value
2015-16	1410870	564348

- The above table shows that taxable income for the F.Y. 2015-16 is Rs.5,64,348/-. The appellant taxable value is less than the threshold limit of Rs.10 Lakhs which is entitled to avail exemption under Notification No.33/2012-ST.

- The demand of service tax for the financial year 2015-16 is not sustainable on merits itself, the appellant is not liable to be registered under Section 69 of the Finance Act,1994 read with Rule 4 of Service Tax Rules, 1994, not required to pay service tax in terms of Section 68(1) of the Finance Act,1994 read with Rule 6 of Service tax Rules, 1994, not required to file ST-3 returns in terms of Section 70 of the Finance Act,1994 read with Rule 7. Hence, the appellant have not violated any of the provisions as alleged in the show cause notice and observed by the learned adjudicating authority.

- As submitted in the previous grounds of appeal, the appellant is not required to discharge any service tax and therefore they are not required to pay any interest under section 75 of the Finance Act,1994. Similarly, the appellant have not contravened any provisions of the Finance act,1994 and rules made there under, no penalty as proposed under section 70,77 and 78 of the Finance Act,1994 is imposed in the impugned order.

5. Personal Hearing in the case was held on 14.07.2023. Shri Pravin Dhandharia, Chartered Accountant, appeared on behalf of the appellant for the hearing. He submitted an additional written submission dated 06.07.2023 during hearing. He reiterated the submissions made in the appeal memorandum. He also submitted that the appellant provided works contract service with material to private individuals. After deducting applicable abatement, the abated value at the rate of 40% is below of Rs. 10 Lakhs for the F. Y. 2015-16. Therefore, he is eligible for threshold exemption. Since, the liability is NIL, he requested to set aside the impugned order.

5.1 . Vide their additional written submission, they submitted that:

- The show cause notice was issued on the basis of information provided by CBDT without any verification of facts with regard to taxability on the activities of the appellant, does not have any locus standi.

- The adjudicating authority had ignored instruction from CBIC dated 01.04.2021 and 23.04.2021 issued vide F.No.137/47/2020-ST and 26.10.2021.
- The SCN was issued prior to issuance of aforesaid instruction. Therefore, it would be pertinent to have look at para 3 of the said instruction which direct how to deal with such a show cause notice. The said para is reproduced as under.

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

- They have not received any of the communication referred in the impugned order and therefore could not produce the required details before the adjudicating authority. The learned adjudicating authority has not bothered to verify as to whether any of the communication referred in the order was acknowledged by the appellant or not.

- The Appellant wants to place reliance on OIA No. AHM-EXCUS-001-APP-140/2022-23 dt. 25.01.2023 & OIA No. AHM-EXCUS-001-APP-141/2022-23 dt. 25.01.2023 in case of Jaldhi Shamikbhai Mehta and Kalgi Mehta.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during personal hearing, additional written submissions and the materials 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 amounting to Rs. 2,04,572/- alongwith interest and penalties, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16.

7. It is observed that the appellant was engaged in Fabrication of various items of Iron and steel having PAN No. APOPP1438A allotted by the Income tax department. They contended that their taxable value remained below the threshold exemption limit of Rs.10 Lakhs in terms of Notification No.33/2012-ST, hence they have not obtained Service tax Registration and not filed ST-3 returns. It is also observed that the SCN was issued to the appellant for demanding service tax by

considering that the income earned by them were taxable. The SCN was issued merely on the basis of data received from the Income Tax department without causing any verification. Here I find it relevant to refer to the CBIC Instructions dated 20.10.2021, relevant portion of the Instructions is re-produced as under

> *"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 notice."*

Considering the facts of the case and the specific Instructions of the CBIC, I find that the SCN was issued indiscriminately and is vague and issued in clear violation of the above Instructions of CBIC. Further, the impugned order being passed ex-parte, the violation of principles of natural justice is apparent.

8. The appellant have contended that the services provided by them being Service alongwith materials purchased and utilised in the process, it merits classification under 'Works Contract Service' and the Service portion is determined in terms of Section 66E(h) of the Finance Act, 1994. They also submit that each of their Work Orders are Original Works and therefore in terms of Sub-Rule (ii) (A) of Rule 2A – Determination of value of service portion in the execution of a works contract, they are eligible for abatement of 60% on the total turnover value. Accordingly they submitted the calculation table as below :

Financial Year (F.Y.)	Turnover (total Income) as per P&L Account	Service Portion /Taxable Value (after allowing abatement)	Remarks
2014-15	Rs. 19,49,204/-	Rs. 7,79,682/-	Taxable Value falls within threshold exemption limit and therefore, exempted.
2015-16	Rs. 14,10,870/-	Rs. 5,64,348/-	- do -

9. In order to have a better understanding, the relevant portions of the Section 66E(h) of Finance Act, 1994 and Section 2A of the Service Tax (Determination of Value) Rules, 2006 are reproduced below :

SECTION 66E. Declared services. — The following shall constitute declared services,
namely:—
...
(h) service portion in the execution of a works contract;
...

Government of India
Ministry of Finance
(Department of Revenue)

New Delhi, the 6th June, 2012

Notification No. 24/2012 - Service Tax

G.S.R. (E).- In exercise of the powers conferred by clause (aa) of sub-section (2) of section 94 of the Finance Act, 1994 (32 of 1994) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) number 11/2012 - Service Tax, dated the 17 th March, 2012, published in the Gazette of India, Extraordinary, vide number
G.S.R. 209 (E), dated the 17 th March, 2012, the Central Government, hereby makes the following rules further to amend the Service Tax (Determination of Value) Rules, 2006, namely :-
1.(1) These rules may be called the Service Tax (Determination of Value) Second Amendment Rules, 2012.
(2) They shall come into force from the 1 st day of July, 2012.

2 . In the Service Tax (Determination of Value) Rules, 2006 (hereinafter referred to as the said rules), for rule 2A, the following rule shall be substituted, namely:-

*"2A. **Determination of value of service portion in the execution of a works contract.**- Subject to the provisions of section 67, the value of service portion in the execution of a works contract , referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely:-*
...
(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely :-

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

Upon simultaneous reading of both the above legal provisions and examining them with the facts of the case I find that the Taxable Value in the instant case is required to be determined following the above provisions. I find force in the argument of the appellant in this regard.

10. Next issue to be decided in the case is grant of benefit of threshold exemption to the appellant in terms of Notification No. 33/2012-ST dated 20.06.2012. The relevant portion of the notification is reproduced below :

Government of India
Ministry of Finance
(Department of Revenue)
Notification No. 33/2012 - Service Tax
New Delhi, the 20th 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 Finance Act), and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification No. 6/2005-Service Tax, dated the 1 st March, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide G.S.R. number 140(E), dated the 1 st March, 2005, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act:

Provided that nothing contained in this notification shall apply to,-
(i) taxable services provided by a person under a brand name or trade name, whether registered or not, of another person; or

(ii) such value of taxable services in respect of which service tax shall be paid by such person and in such manner as specified under sub-section (2) of section 68 of the said Finance Act read with Service Tax Rules,1994.

2. The exemption contained in this notification shall apply subject to the following conditions, namely:-
(i) the provider of taxable service has the option not to avail the exemption contained in this notification and pay service tax on the taxable services provided by him and such option, once exercised in a financial year, shall not be withdrawn during the remaining part of such financial year;
(ii) the provider of taxable service shall not avail the CENVAT credit of service tax paid on any input services, under rule 3 or rule 13 of the CENVAT Credit Rules, 2004 (herein after referred to as the said rules), used for providing the said taxable service, for which exemption from payment of service tax under this notification is availed of;
(iii)the provider of taxable service shall not avail the CENVAT credit under rule 3 of the said rules, on capital goods received, during the period in which the service provider avails exemption from payment of service tax under this notification;
(iv) the provider of taxable service shall avail the CENVAT credit only on such inputs or input services received, on or after the date on which the service provider starts paying service tax, and used for the provision of taxable services for which service tax is payable;
(v) the provider of taxable service who starts availing exemption under this notification shall be required to pay an amount equivalent to the CENVAT credit taken by him, if any, in respect of such inputs lying in stock or in process on the date on which the provider of taxable service starts availing exemption under this notification;
(vi) the balance of CENVAT credit lying unutilised in the account of the taxable service provider after deducting the amount referred to in sub-paragraph
(v), if any, shall not be utilised in terms of provision under sub-rule (4) of rule 3 of the said rules and shall lapse on the day such service provider starts availing the exemption under this notification;
(vii) where a taxable service provider provides one or more taxable services from one or more premises, the exemption under this notification shall apply to the aggregate value of all such taxable services and from all such premises and not separately for each premises or each services; and
(viii) the aggregate value of taxable services rendered by a provider of taxable service from one or more premises, does not exceed ten lakh rupees in the preceding financial year.

...
(B) "aggregate value" means the sum total of value of taxable services charged in the first consecutive invoices issued during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66B of the said Finance Act under any other notification."
...

Examining the above legal provisions with the facts of the case, I find that the appellants are eligible for the benefit of the said notification.

11. Further, regarding the calculation of Taxable Value from the total turnover for the relevant period, I find that, sequentially relating all the above legal provisions discussed supra, I find that the aggregate value of turnover/Taxable value is required to be calculated after allowing the abatement available to the appellant. Further, I also find that the benefit of threshold exemption is available to the appellant since the actual Taxable Value in respect of the previous Financial Year i.e F.Y. 2014-15 comes to Rs.7,79,682/-. Accordingly the actual Taxable turnover of the appellant for the relevant period i.e F.Y. 2015-16 comes to Rs. 5, 64,348/-, which is also below the threshold exemption limit of Rs. 10,00,000/- in terms of Notification No. 33/2012-ST dated 12.06.2012. Hence, the appellant is not liable for payment of Service Tax during the period F.Y 2015-16.

11.1 Here, I find it relevant to refer to the Circular issued by the Directorate of General of Service Tax, Frequently Asked Questions on Service Tax, 5th Edition, 01.09.2010. Relevant portions of the said Circular are reproduced below :

1. General

1.5 How to decide whether Service tax is payable by a person?

A. **If you are engaged in providing a service to any person, please check :-**

(i) Whether the service rendered by you is falling under the scope of any of the taxable services listed in the *Appendix-1*;

(ii) Whether there is a general or specific exemption available for the category of service provided under any notification issued under section 93 of the Finance Act, 1994;

(iii) Whether you are entitled to the value based exemption available for small Service Providers under Notification No. 6/2005-S.T., dated 1-3-05 as amended from time to time. Details are explained in para 8.1;

(iv) Whether the service charges were received for the services provided or to be provided.

In case the service provided by a person falls within the scope of the taxable services and if such service is not fully exempted, the Service tax is payable on the value of the taxable service received, subject to the eligible abatements, if any (as discussed at para 1.7).

1.7 What is meant by "value of taxable service"?

(i) The "value of taxable service" means, the *gross amount* received by the service provider for the taxable service provided or to be provided by him. Taxable value has to be determined as per the provisions of Section 67 of the Finance Act, 1994, read with Service Tax (Determination of Value) Rules, 2006.

(ii) For certain services, a specified percentage of abatement is allowed from the gross amount collected for rendering the services *(see Appendix-2)* subject to the conditions, *inter alia,* that CENVAT credit has not been availed by the service provider and the benefit under the Notification No. 12/2003-S.T., dt. 20-6-2003 as amended has also not been availed.

(iii) There is also a composition scheme for 'works contract service', where the person liable to pay Service tax in relation to works contract service shall have the option to discharge his Service tax liability on the works contract service provided or to be provided, instead of paying Service tax at the

rate specified in section 66 of the Act, by paying an amount equivalent to **4% of the gross amount** charged for the works contract. The gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, paid on transfer of property in goods involved in the execution of the said works contract.

12. In view of the above discussions, I am of the considered view that the Service Tax demand of Rs. 2,04,572/- confirmed vide the impugned order is legally incorrect and unsustainable, therefore liable to be set aside. As the demand fails to sustain, the question of interest and penalty does not arise.

13. Accordingly, the impugned order is set aside and the appeal filed by the appellants is allowed.

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: August, 2023

Attested

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

BY RPAD / SPEED POST

To,

Shri Pankajkumar Parsotambhai Patel
Proprietor of M/s. Khodiyar Engineering Works,
C-52, Ayodhyanagar Society, Nani Kadi Road,
B/h Ramji Mandir, Kadi, Mehsana, Gujarat,

Copy to:

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