



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:- 20230964SW0000313170

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/2647/2022-APPEAL / 5499 - 83
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-087/2023-24 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	11.09.2023
(ङ)	Arising out of Order-In-Original No. 08/AC/DEM/MEH/ST/New Haresh Steel/2022-23 dated 11.05.2022 passed by the Assistant Commissioner, CGST, Division-Mehsana, Gandhinagar Commissionerate.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s New Haresh Steel Fabricators, 135/2, GIDC, Mehana Industrial Estate, Mehana, 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:-

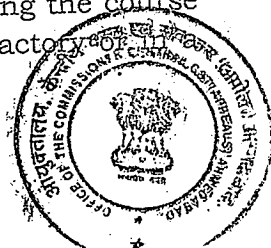
**Revision application to Government of India:**

(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, 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 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 सुताबिक 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 खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

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

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ 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.

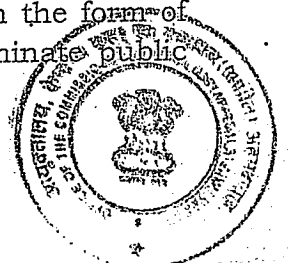
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

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

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

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

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

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

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

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

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



अपीलियआदेश / ORDER-IN-APPEAL

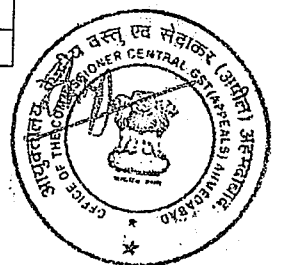
The present appeal has been filed by M/s New Haresh Steel Fabricators, 135/2, GIDC, Mehsana Industrial Estate, Mehsana, Gujarat-384002 (hereinafter referred to as the appellant) against Order in Original No. 08/AC/DEM/MEH/ST/New Haresh Steel/2022-23 dated 11.05.2022 [hereinafter referred to as the "*impugned order*"] passed by the Assistant Commissioner, CGST, Division: Mehsana, Commissionerate: Gandhinagar [hereinafter referred to as the "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellants were engaged in providing taxable services and holding Service Tax Registration No. ABHPP6223GST001. As per the information received through Preventive Section, HQ, Gandhinagar vide D G Systems Report No. 02 & 03, discrepancies were observed in the total income declared by the appellants in their Income Tax Returns (ITR) when compared with the Service Tax Returns (ST-3) for the period F.Y. 2015-16 and F.Y. 2016-17. In order to verify the discrepancies in these figures, letter dated 08.05.2020, 15.06.2020 & 02.07.2020 were issued to the appellants through e-mail calling for details of services provided during the period but the appellants did not submit any reply.

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

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

Sr. No.	Period (F.Y.)	Differential Taxable Value as per Income Tax Data (in Rs.)	Rate of S. Tax (incl. Cess)	S. Tax to be demanded (in Rs.)
1.	2015-16	3,26,322/-	14.5%	47,317/-
2.	2016-17	14,45,438/-	15%	2,16,816/-
	<b>TOTAL</b>	<b>17,71,760/-</b>		<b>2,64,132/-</b>



4.1 Show Cause Notice F.No. V.ST/11A-215/New Haresh Steel/2020-21 dated 18.08.2020 (in short SCN) was issued to the appellant wherein it was proposed to demand and recover service tax amounting to Rs.2,64,132/- under the proviso to Section 73 (1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994. It was also proposed to impose penalties under Section 77(2), 77C and 78 of the Finance Act, 1994.

5. The SCN was adjudicated vide the impugned order wherein :

- Demand of Service Tax amounting to Rs.2,64,132/- (Considering the taxable value as Rs. 17,71,760/-) was confirmed under Section 73 (2) of the Finance Act, 1994 alongwith interest under Section 75;
- Penalty of Rs. 10,000/- was imposed under Section 77(2) of the Finance Act, 1994;
- Penalty amounting to Rs. 200/- per day till the date of compliance or Rs. 10,000/- whichever is higher was imposed under Section 77(C) of the Finance Act, 1994
- Penalty amounting to Rs.2,64,132/- was imposed under Section 78 of the Finance Act, 1994 alongwith option for reduced penalty under proviso to clause (ii).

6. Being aggrieved with the impugned order, the appellant have filed this appeal alongwith application for condonation of delay on following grounds:

- The appellant are Proprietorship firm registered under Service Tax department. They had filed their Service Tax Returns (ST-3) as well as Income Tax returns during the period F.Y. 2015-16 and F.Y. 2016-17. They are engaged in the trading of Goods (sale of certain machinery items) and carrying out various contract work for UGVCL, GETCO etc. The appellant has complied with the provision of the act and filed service tax return and paid taxes for the F. Y. 2015-16 and F.Y. 2016-17. However, the adjudicating authority has pointed out the difference between ITR and ST returns without giving any details how the difference arised.
- During the period F.Y. 2015-16 and F.Y. 2016-17, appellant have earned following income :-



Particular	F.Y. 2015-16 (in Rs.)	F.Y. 2016-17 (in Rs.)
Trading Income	9,78,308/-	5,10,461/-
Contract Income	10,54,347/-	12,90,647/-
Total Income	20,32,655/-	18,01,108/-

- The appellant submitted P&L Account, ITR, ST-3 returns and the following reference of negative list of service:-

*Section 66D Negative list of Service: The negative list of service comprise of following services namely:-*

*e. trading of goods*

Hence, the Trading activity is out of purview of service tax, accordingly, service tax is not applicable on trading income which declared in ITR.

- The appellant has carried out various contract work for which service tax has been paid as per the provision of the act. They submitted the copy of invoices along with challan and ST Return and requested to consider the same and closed the proceeding.
- Works Contract Income earned during the F. Y. 2015-16 and F. Y. 2016-17 and the Service Tax paid against them are tabulated below :

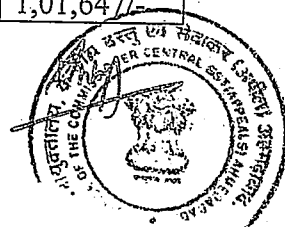
01-April, 2015 – 31 March, 2016

(amount in Rs.)

Date of Payment	Particulars	Works Contract Income	Rate of S.Tax (%)	Service Tax Amount payable	Amount actually paid
20.06.2015	PGVCL, Gandhidham	18,750/-	14	2,625/-	2,625/-
21.06.2015	GETCO, Construction, Anjar	5,500/-	14	770/-	770/-
01.08.2015	GETCO, Construction, Anjar	4,810	14	673/-	673
02.08.2015	GETCO, Construction, Deesa	28,323/-	7	1,983/-	1,751/- + 231/-
06.08.2015	PGVCL, Gandhidham	10,000/-	14	1,400/-	1,400/-
10.08.2015	PGVCL, Gandhidham	73,133/-	14	10,328/-	10,604/-
01.11.2015	GETCO, Construction, Deesa	3,65,160/-	7	25,561/-	23,955/- + 1,606/-
01.01.2016	UGVCL, Patan	4,99,396/-	14.5	72,412/-	72,413/-
01.01.2016	Sanand Sub Div.	1,978/-	14.5	287/-	58/-
01.01.2016	Sanand Sub Div.	1,978/-	14.5	287/-	58/-
01.03.2016	Cash	6,500/-	14.5	942/-	696/- + 246/-
	Grand Total	10,15,528/-		1,17,175/-	1,17,086/-

01 April, 2016 to 31 March, 2017

Date of Payment	Particulars	Works Contract Income	Rate of S.Tax (%)	Service Tax Amount payable	Amount actually paid
06.06.2016	PGVCL, Gandhidham	82,833/-	15	12,424/-	12,425/-
08.07.2016	UGVCL, Bopal	84,902/-	15	12,735/-	12,736/-
05.08.2016	UGVCL, Visnagar	47,250/-	15	7,087/-	180/- + 6,907/-
30.09.2016	GETCO, Mehsana	6,77,650/-	15	1,01,647/-	1,01,647/-



01.10.2016	GETCO, Construction, Deesa	83,265/-	15	12,490/-	12,490/-
25.01.2017	UGVCL, Bopal	1,46,402/-	15	21,915/-	00
	Grand Total	11,22,302/-		1,68,298/-	1,46,385/-

Citing the above figures they contended that as there is no such difference in payable and paid figures as alleged in the SCN, hence, the demand may be dropped.

- Further, the appellant sated that they have filed their Service Tax Returns (ST-3) regularly for the period F. Y. 2015-16 and 2016-17, hence, there is no suppression in the matter. The SCN is issued by invoking extended period under Section 73. Whereas present case is not covered under Section 73 of Finance Act, as amended. The matter is already time barred and notice required to be quashed. They relied on the judgment of Hon'ble Supreme Courts in the matter. The appellant requested to kindly consider the same and set aside impugned order.
- The adjudicating authority has confirmed penalty under section 70, 77, 78 of the Finance Act. As discussed above there in no such liabilities so there is no penalty imposable. The appellant has act on bonafide belief and tried to comply with provision of the act. They relied on the decision of Hon'ble Supreme Court in the case of Hindustan steel v State of Orissa 1978 ELT (J159). They requested to drop the penalty proceeding.

7. Personal Hearing in the case was held on 11.08.2023. Mr. Arpan Yagnik, Chartered Accountant, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in the appeal memorandum. He also submitted that during the relevant period, the appellant has already filed service tax returns for the services rendered and paid applicable tax. Copies of ITR and ST-3 returns were submitted before the adjudicating authority, however, it is not clear as to how the differential value was calculated. Since the service tax liability is already discharged, he requested to set aside the impugned order.

8. It is observed from the records that the present appeal was filed by the appellant on 05.08.2022 against the impugned order dated 11.05.2022, which was received by the appellant on 26.05.2022.

8.1 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 25.07.2022 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 24.08.2022. This appeal was filed on 05.08.2022, i.e after a delay of 10 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 F.Y. 2016-17. Also, complete documents for the earlier period were not traceable by them due to the sudden demise of their regular accountant/employee on account of Covid-19. The new accountant/employee (employed on 01.06.2022, as per document submitted) took some time to understand and arrange the documents, they requested to condone the delay. 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. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during hearing and the materials available on records. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of Service Tax amounting to Rs. 2,64,132/- 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 and F.Y. 2016-17.





10. It is observed that the appellant are registered with the department and have filed their ST-3 Returns during the relevant period. However, the SCN in the case was issued merely on the basis of data received from the Income Tax department without ascertaining the nature of service provided by the appellant or classifying them. It is apparent that no further verification has been caused to ascertain the nature of service and whether any exemptions/abatement were claimed by the appellant. Hence, the SCN was issued in clear violation of the CBIC Instructions dated 20.10.2021, relevant portion of the Instructions is re-produced as under :

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

Considering the facts of the case and the specific Instructions of the CBIC, I find that the SCN was issued indiscriminately and is vague. It is also observed that the ST-3 Returns for the period F.Y. 2016-17 were filed on 25.05.2017 and the SCN was issued on 18.08.2020, i.e after a period of more than 38 months. This clearly shows that the SCN in the case was barred by limitation of time and legally unsustainable.

11. It is also observed from the documents submitted by the appellant that they have filed their ST-3 Returns regularly during the period F.Y. 2015-16 and F.Y. 2016-17 and their assessment was never 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 under proviso to Sub-section (1) of Section 73 of the Finance Act, 1994 vide the impugned order, invoking the extended period of limitation.

11.1 In this regard, I find it 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".



11.2 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.)]

11.3 In view of the above findings and following the judicial pronouncements, I find that the impugned order was passed in clear violation of the settled law and is therefore legally incorrect, unsustainable and liable to be set aside on these grounds alone.

12. The appellants have contended that during the period F.Y. 2015-16 and F.Y. 2016-17 they had a total Trading Income of Rs. 14,88,769/- and in terms of Section 66D of the Finance Act, 1994, Trading Income is exempted from levy of Service Tax. Upon verifying these figures with the Profit & Loss Account of the relevant period submitted alongwith the appeal papers, I find merit in their contention, accordingly, an amount of Rs. 14,88,769/- is eligible to be deducted from the total Gross Income to arrive at the net taxable value.

13. It is observed from the documents submitted by the appellant that the Gross Values declared in the Income Tax Return, the ST-3 Return and the Taxable Value considered in the SCN are not analogous. The figures are detailed as per Table below :

TABLE (all figures in Rs.)			
Financial Year	Value shown as per ITR	Gross Value as per ST-3 Return	Total Taxable Value considered as per SCN
F.Y. 2015-16	Sale of Services : 10,54,348/- Sale of Goods : 9,78,308/-	11,16,592/-	14,42,914/-
F.Y. 2016-17	Sale of Services : 12,90,648/- Sale of Goods : 5,10,462/-	1,67,735/-	16,13,173/-



From the above it is evident that the taxable value considered in the SCN for quantification of demand is not analogous with the Income Tax Return and/or ST-3 Return. Further, the adjudicating authority has not analysed or discussed the issue and confirmed the demand ex-parte vide the impugned order without carrying out any verification. Therefore, I find that the impugned order is defective and a non-speaking order passed without application of mind is legally unsustainable and liable to be set aside.

14. From the documents submitted by the appellant it is forthcoming that the appellant have provided services to various Government Companies viz. PGVCL (Pashchim Gujarat Vij Corporation Limited), GETCO, UGVCL etc. It is also observed that they have paid Service Tax at appropriate rate in all their Invoices issued in respect of 'Labour Work' provided to these Government companies.


15. In view of the above discussions, I am of the considered view that the impugned order passed by the adjudicating authority confirming the demand of Service Tax amounting to Rs. 2,64,132/- alongwith interest and penalties invoking the extended period of limitation is defective and non-speaking order issued in violation of the principles of natural justice as well as in violation of the settled law (as discussed at para-11 supra), and is therefore liable to be set aside being legally unsustainable.

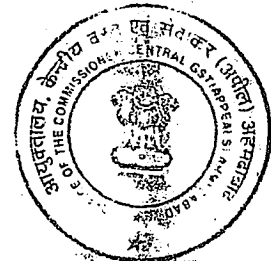
16. Accordingly, the impugned order confirming the demand of Service Tax amounting to Rs. 2,64,132/- alongwith interest and penalties is set aside and the appeal filed by the appellants is allowed.

17. 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.

Attested

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

  
(Shiv Pratap Singh)  
Commissioner (Appeals)  
Date: 28 August, 2023



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