



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 Regd. Post

DIN :- 20230964SW0000616111

(क)	फाइल संख्या / File No.	GAPPL/COM/STD/189/2022-APPEAL / 5484-88
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-088/2023-24 and 28.08.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	11.09.2023
(ङ)	Arising out of Order-In-Original No. AHM-CEX-003-REASSIGNED-AC-NLC-039-21-22 dated 16.06.2022 passed by the Assistant Commissioner (Sevottam), CGST & CE, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Office of the Assistant/Deputy Commissioner, CGST & CE, Division - Mehsana, Gandhinagar Commissionerate, 2nd Floor, Sardar Patel Vyapar Sankul, Mal Godoun Road, Mehsana-384002
(छ)	प्रतिवादी का नाम और पता / Name and Address of the Respondent	M/s Shree Om Enterprise, Highway Road, Behind Rivera Guest House, Mehsana, 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) केंद्रीय 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 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 हैं।

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 हों।

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 होतो 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.

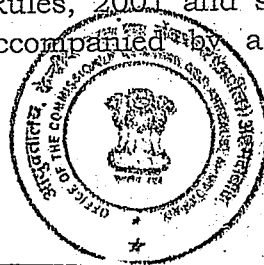
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

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-ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है। Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

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

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

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

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

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

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

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

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

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



अपीलिय आदेश / ORDER-IN-APPEAL

The Assistant Commissioner, CGST, Division-Mehsana, Commissionerate - Gandhinagar (hereinafter referred to as the "Department"), in pursuance of the Review Order No. 05/2022-23, dated 08.08.2022 issued from F. No. GEXCOM/REV/ST/OIO/ 18878/2022-REV- O/o COMMR-GST-GANDHINAGAR by the Commissioner, CGST & Central Excise, Gandhinagar, has filed the present appeal under Section 84 of the Finance Act, 1994 against the Order-In-Original No. AHM-CEX-003-REASSIGNED-AC-NLC-039-21-22, dated 16.06.2022 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner (Sevottam), CGST & Central Excise, Commissionerate-Gandhinagar (hereinafter referred to as the "adjudicating authority") in the matter of M/s Shree Om Enterprise, Highway Road, Behind Rivera Guest House, Mehsana, Gujarat-384002 (hereinafter referred to as the "respondent").

2. The facts of the case in brief are that the respondent was holding Service Tax Registration No. ABRFS6540FSD001 and engaged in providing various services i.e. 'Construction Service other than residential complex service', 'Manpower Recruitment/Supply agency Service', 'Works Contract Service' and 'Rent-a-Cab Service'. Audit of Service Tax records of respondent for the period F.Y. 2014-2015 upto F. Y. 2017-18 (up to June-2017) was conducted by the officers of the Central GST, Audit Commissionerate, Ahmedabad. The audit was concluded vide Final Service Tax Audit Report (FSTAR) No. ST-1655/2019-20 dated 11.06.2020. As per the said FSTAR, Revenue Para-5 remained unsettled. The para is reproduced below :

Revenue Para – 5 : Short Payment of service tax on reconciliation (Audit Code ST-VSR30)

During the audit verification and reconciliation of accounts ledgers with ST03 returns filed during 2014-15 to 2017 (upto June 17) of various services, differences in amount of service rendered and on which service tax paid with books of accounts/ledgers for the years 2014-15, 2015-16, 2016-17, 2017-18 (upto June-2017) was noticed to the extent of Service Tax Rs. 19,93,607/- which remain to be paid along with interest and penalty. However, the assessee during the course of audit has paid Service Tax of Rs.22,288/- with interest of Rs. 21,000/- and penalty amount of Rs. 3,345/- totaling to Rs. 46,633/- vide DRC-03 No. DC2410190406471 dated 24.10.2019 out of the above outstanding service tax of Rs. 19,93,607/-. Therefore, remaining service tax of Rs.19,71,319/- is still to be recovered from the assessee alongwith appropriate interest and penalty.

3. Show Cause Notice F.No. VI/1(b)-260-Shree Om Enterprise/IA/AP-62 dated 12.06.2020 to the Respondent (in short SCN) was issued to the respondent wherein it was proposed to :-



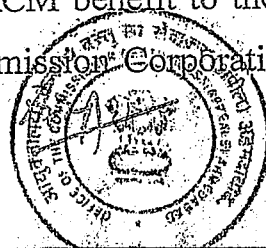
- i) Demand and recover Service Tax amounting to Rs. 19,93,607/- not paid on the differential income under Section 73 (1) of the Finance Act, 1994 as well as appropriation of Service Tax amounting to Rs.22,288/- already paid by them;
- ii) Demand and recover Interest under Section 75 of the Finance Act, 1994 as well as appropriate the interest amounting to Rs. 21,000/- paid by them;
- iii) Penalty was proposed under the provisions of Section 78(1) of the Finance Act, 1994 as well as appropriation of penalty amounting to Rs. 3,345/- paid by them.

3. The SCN was adjudicated vide the impugned order, wherein the demand of Service Tax amounting to Rs. 19,93,607/- for the period F.Y. 2014-15 to F.Y. 2017-18 (upto June-2017) was dropped. However, the interest amounting to Rs. 21,000/- paid by the assessee was appropriated in terms of Section 75 of the Finance Act, 1994 and penalty amounting to Rs. 3,345/- paid by the respondent was appropriated in terms of Section 78 of the Finance Act, 1994.

4. Upon examination and review in terms of legality and propriety of the said order, the department found that the impugned order is not legal and proper. Being aggrieved with the impugned order, the department has preferred the present appeal on the grounds as mentioned in the subsequent paragraphs, with a request to set aside the impugned order on the grounds mentioned herein below :-

4.1 The adjudicating authority has dropped the entire proceedings initiated vide Show Cause Notice No.: V/1(b)-260-Shree Om Enterprise/1A/18-19/AP-62 dated 12.06.2020 by extending the RCM benefit as per Notification No.30/2012-ST dated 22.06.2012, as amended. The adjudicating authority has merely accepted the contention of the assessee and dropped the entire demand without properly justifying and without discussing the bifurcation/reconciliation/quantification of the taxable value vis-a-vis the exempted value. There is no mention of the total taxable value even on which the demand of Rs.19,93,607/- has been raised. No reasons or justifications have been mentioned in the findings for setting aside the demand. The entire demand of Rs.19,93,607/- has been dropped vide a non-speaking order which is bad in law.

4.2 The adjudicating authority has not gone through the Agreement/Contracts diligently while deciding the case. As per Paragraph No.16 of the impugned Order, the adjudicating authority has extended 100% RCM benefit to the assessee for the services provided to M/s. Gujarat Energy Transmission Corporation Ltd (GETCO)



under the service category of Manpower supply. From a sample acceptance of Tender letter dated 12.05.2014 of GETCO, it is seen that the contract has been entered into for hiring of diesel driven close body Jeep (Non AC). Also, quantification of the taxable value, the abatement granted vide RCM, the tax liability, etc has not been discussed in the findings. To extend the benefit of RCM under manpower supply, the adjudicating authority should have first established that the service provided is in fact that of manpower supply having the element of control and supervision by the principal. Nothing in this regard have been discussed to justify the granting of RCM benefit by the adjudicating authority.

4.3 The adjudicating authority have attributed the entire demand under three categories viz. Supply of Manpower, Rent-a-Cab and Works Contract. There is no mention about the services provided to RBI. From a sample Works Order dated 25.06.2015 entered with RBI, it is seen that respondent has supplied fire fighters and leading firemen at the Main office premises of RBI and hence the adjudicating authority seems to have considered it under the category of Manpower Supply Agency services. As per the condition of the contract, that the rates agreed upon was inclusive of PF & ESI. Which shows that the Principal is not responsible for the salary including the PF & ESI contributions. Hence, the said services provided would not fall under the category of Manpower Supply. It is also not clear from the findings as to under which category the said services provided to RBI have been considered by the adjudicating authority.

4.4 The adjudicating authority has extended RCM benefit to the respondent for the services provided to M/s. Gujarat State Electricity Corporation Ltd (GSEC) under the category of Rent-a-cab service. A sample Work Order dated 30.08.2014, shows that the contract has been entered into for hiring of vehicle. RCM benefit in Rent-a-cab service is provided vide Sr. No:7(a) & 7(b) of the Table to Notfn. No.30/2012-ST. Whether the RCM benefit is as per Sr. No. 7(a) or 7(b) depends upon taxable value considered i.e. abated value or non-abated value. For extending the RCM benefit, it should be first determined first whether the assessee has considered the abated value or non-abated value. The findings of the adjudicating authority do not even reveal whether the RCM benefit has been granted vide Sr. No. 7(a) i.e. 100% RCM or 7(b) i.e. partial RCM. Quantification of the taxable value, abatement granted vide RCM, the tax liability, etc are not mentioned in the findings.



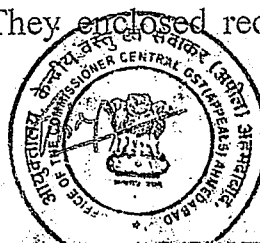
4.5 The adjudicating authority has extended partial RCM benefit to the assessee for the services provided to M/s. IOCL, GETCO & ONGC also under the service category of Rent-a-cab service. RCM benefit in Rent-a-cab service is provided vide Sr. No. 7(a) & 7(b) of the Table to Notfn. No.30/2012-ST. The findings of the adjudicating authority do not even reveal whether the RCM benefit has been granted vide Sr. No. 7(a) i.e. 100% RCM or 7(b) i.e. partial RCM. Also, there is no quantification of the taxable value, the abatement granted vide RCM, the tax liability, etc in the findings.

4.6 The adjudicating authority has extended partial RCM benefit to the assessee for the services provided to M/s. ONGC under the service category of Works Contract. Nothing has been discussed by the adjudicating about the nature of the works awarded to the assessee and how they are eligible for the RCM benefit. The entire demand dropped vide the impugned Order dated 14.06.2022 is a non-speaking Order.

4.7 The adjudicating authority has grossly erred in extending the RCM benefit of Notification No.30/2012-ST, ibid to the assessee through a Non-Speaking Order. In absence of any reasons justifying the setting aside of demand in the findings of the impugned Order, the non-speaking order needs to be set aside and remitted back to the adjudicating authority to decide it afresh on the basis of documentary evidences and following the legal statutes.

5. The Respondent filed a Cross Objection to the appeal on 08.05.2023, inter alia, contending that ;

- Service Tax Audit for the period April 2014 to June 2017 was undertaken in month of August 2019 and by another Audit Party in the month of May 2020. Vide e-mail dated 22.10.2019 a demand of Service Tax was communicated to them. They agreed and paid the amount of Rs. 1,10,247/- including Service Tax, Interest and Penalty through GST FORM DRC-03 dated 24.10.19.
- Subsequently, the demand of Rs, 19,71,319/- along with Interest and penalty was raised by issuing Show Cause Notice dated 12.06.2020. However, they did not provide any calculation as to from where have they derived such an amount. As per their own reconciliation, they are not liable to pay any service tax. As they have paid additional service tax on some of the services, but excess payment was not considered by the Audit. They enclosed reconciliation of income received and service tax paid thereon.



- Show Cause Notice dated 12.06.2020 came to be issued demanding Rs. 19,71,319/- along with Interest and Penalty based on the last Audit point raised in Service Tax Audit Report against which they had replied clarifying all the legal and factual grounds.
- Regarding the ground of appeal that the impugned order was a non-speaking Order they contended that the findings of the adjudicating authority were based on the documents submitted by the respondents.
- Regarding the allegation that the Adjudicating authority has extended 100% RCM benefit to the Appellant for Rent-a-cab services and not Manpower Supply services provided to GETCO. In this regard they contended that the sample Acceptance of Tender Letter dated 12.05.2014 actually pertains to Rent a Cab service entered into with GETCO. They submitted Sample Works Order pertaining to Manpower Supply services provided to GETCO.
- Regarding the allegation that the Sample Works Order dated 25.06.2015 entered with RBI pertains to supply of fire-fighters and leading fireman at the main office premises of RBI. In this regard they contended that definition of Manpower supply nowhere mentions that the main element should be of Control and Supervision in the manpower supply. It doesn't matter even if there is a condition that the contract rates agreed upon is inclusive of PF and ESI or whether principal is responsible for the salary including PF & ESI contributions or not. They submitted Sample Work Order with RBI.
- Regarding the Contract for the purpose of Rent-a-cab service as mentioned at Sr. No. 7(a) or 7(b) of the Notification No. 30/2012-ST dated 20.06.2012. They contended that their services provided to GSECL were covered under Sr. No. 7(a) and thus were under 100% RCM, as they have not availed any Cenvat Credit which is shown in their ST-3 returns.
- Regarding the department's ground that the nature of the works awarded to the Respondent regarding services provided to ONGC was not discussed, they contended that they submitted Sales Register (Service wise) for the period April 2014 to June 2017 showing all the services provided to various companies and institutions.



- Further, they requested to consider the facts made under the submission and uphold the impugned order & reject the departmental appeal.

6. Personal Hearing in the matter was conducted on 26.06.2023. Shri Tapan Shah, Chartered Accountant, appeared on behalf of the Respondent. He reiterated the submission made in cross objection to filed on 8th May, 2023. He submitted that the lower authority has passed the order after verifying the relevant documents which were supplied to him in their reply to SCN and during personal hearing. He undertook to submit a copy of the same within a week. Therefore, the order passed by lower authority is correct on the facts and law. The review by the department and the appeal filed in pursuance of the review order is without any merit. Therefore, he requested to uphold the impugned order and reject the appeal filed by the department.

6.1 Vide their letter dated 04.07.2023, the Respondent submitted copies of Work Orders & reconciliation statement.

7. I have carefully gone through the facts of the case, grounds of appeal, the written submissions made by the respondent as well as submissions made at the time of personal hearing, documents submitted by them and the materials available on the record. The issue before me for decision is as to whether the impugned order dropping the demand of Service Tax amounting to Rs.19,93,607/- in the facts and circumstances of the case, is legal and proper *or* otherwise. The demand pertains to the period F. Y. 2014-2015 to F. Y. 2017-18 (up to June-2017).

8. It is observed from the documents submitted by the respondent that the respondent was registered under service tax department and engaged in providing various services i.e. 'Construction Service other than residential complex service', 'Manpower Recruitment/Supply agency Service', 'Works Contract Service' and 'Rent-a-Cab Service'. During the course of EA-2000-Audit of the records of the Respondent for the period F. Y. 2014-2015 to F. Y. 2017-18 (up to June-2017), short payment of Service Tax was observed which was not contested by the respondents. Accordingly, Show Cause Notice was issued for demand of Service Tax of Rs. 19.93.607/- to them. They presented their case before the adjudicating authority and submitted documents in their defense. Considering their submissions the adjudicating authority had dropped the demand of Service Tax, vide the impugned order.



9. I find that the respondent have declared the Category of Services availed by them in their ST-3 Returns. Further against each category of service declared at Column A 9. Further, regarding the exemptions claimed and availed by them they have declared the relevant notification and Sr.No. at Column A 11 of the return. From the copy of ST-3 Return submitted by them, I find that in respect of 'Rent-a-cab Scheme Operator Service' they have claimed and availed exemption under Sl. No. 7(a) of Notification No. 30/2012-ST. Hence, the claim of the appellant department that the adjudicating authority have extended the benefit of RCM without specifying the Sl.No. under which the Exemption was granted stands untenable.

10. I further find that the respondents had defended their case before the adjudicating authority alongwith detailed submissions and documents. The submissions made by them are reproduced in detail in the impugned order. Further, at Para-16, 17 and 18 of the impugned order the adjudicating authority have explained each Class of service and the relevant portion of the notification for abatement/exemption. Further, at Para-20 and 21 of the impugned order the adjudicating authority have presented a Year wise reconciliation in respect of each type of service in tabulated form. The entire period from F.Y. 2014-15 to F.Y. 2017-18 (upto June-2017) is covered under four such tables. These tables clearly bring out the fact that during the entire period of demand i.e F.Y. 2014-15 to F.Y. 2017-18 (upto June-2017), the respondents have made excess/short payment of Service Tax as shown below :

Financial Year	Type of Service	Amount of Service Tax Payable (in Rs.)	Remarks = Excess / Short Paid
F.Y. 2014-15	Manpower Recruitment/Supply Agency Service	- 5,463/-	Excess paid
F.Y. 2014-15	Rent-a-cab supply scheme operator service	+ 59,926/-	Short Paid
F.Y. 2014-15	Works Contract Service	+ 3,087/-	Short Paid
F.Y. 2015-16	Manpower Recruitment/Supply Agency Service	+ 22,680/-	Short Paid
F.Y. 2015-16	Rent-a-cab supply scheme operator service	+ 2,90,432/-	Short Paid
F.Y. 2015-16	Works Contract Service	+ 60,927/-	Short Paid
F.Y. 2016-17	Rent-a-cab supply scheme operator service	- 5,22,135/-	Excess Paid
F.Y. 2017-18 (Upto June-2017)	Rent-a-cab supply scheme operator service	- 22,288/-	Excess Paid
	Total	- 1,12,834/-	Excess payment

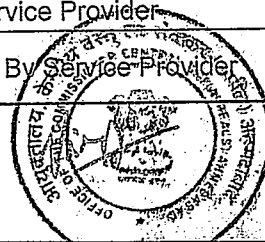


10.1 From the above explanations given vide the impugned order it is apparent that the appellants have made an excess payment of Service Tax amounting to Rs. 1,12,834/- during the period under consideration and the adjudicating authority has given detailed findings regarding the conclusions arrived. Vide para 22 and 23 of the impugned order excess payment of service tax is confirmed and it is also explained that no demand of service tax, interest or penalty stands to be recovered. Hence, the contention of the appellant department that the impugned order is a non-speaking order is devoid of merit.

11. I further find that as regarding the contention of the appellant department regarding services provided to RBI (Reserve Bank of India), I find that they have provided Work Orders of the Apex Bank upto the period F.Y. 2017-18, hence it is beyond doubt that the respondents have provided 'Manpower Recruitment/Supply Agency Services' to the Reserve Bank of India. Hence, the contention of the appellant department in this regard is not tenable.

12. Regarding the contention of the appellant department in respect of the Exemptions availed by the respondent for the services provided GETCO, IOCL, ONGC and M/s. Gujarat State Electricity Corporation Ltd (GSEC), I find that the respondent has submitted an Invoice wise summary of the Services provided by them during the relevant period vis-à-vis the type of service receiver and abatement/exemption available, all details are as per table below :

Financial Year (F.Y.)	Type of Service	Type of Service Receiver	Service Receiver	Remarks	Value of Taxable Service (in Rs.)
2014-15	Manpower	Body Corporate	Corporate	25% By Service Provider & 75% By Service Receiver	2,15,868
2014-15	Manpower	Body Corporate	GETCO	100% By Service Provider	9,74,246
2014-15	Manpower	Body Corporate	GMDC	25% By Service Provider & 75% By Service Receiver	17,79,316
2014-15	Manpower	Body Corporate	RBI	25% By Service Provider & 75% By Service Receiver	38,50,128
2014-15	Manpower	Non Corporate	Non Corporate	100% By Service Provider	4,73,823
2014-15	Rent a Cab	Body Corporate	GEB	40% Abatement, 100% Payment by Service Provider	3,73,199
2014-15	Rent a Cab	Body Corporate	GETCO	40% Abatement, 100% Payment by Service Receiver	15,10,618
2014-15	Rent a Cab	Body Corporate	IOCL	40% Abatement, 100% Payment by Service Receiver	3,14,639
2014-15	Rent a Cab	Non Corporate	Non Corporate	40% Abatement, 100% Payment by Service Provider	5,34,054
2014-15	Works Contract	Body Corporate	ONGC	100% By Service Provider	14,58,055



2015-16	Manpower	Body Corporate	Corporate	100% By Service Receiver	4,25,760
2015-16	Manpower	Body Corporate	GETCO	100% By Service Provider	5,82,871
2015-16	Manpower	Body Corporate	GMDC	100% By Service Receiver	32,87,510
2015-16	Manpower	Body Corporate	RBI	100% By Service Receiver	45,16,596
2015-16	Manpower	Non Corporate	Non Corporate	100% By Service Provider	2,59,200
2015-16	Rent a Cab	Body Corporate	GEB	40% Abatement, 100% Payment by Service Provider	4,51,302
2015-16	Rent a Cab	Body Corporate	GETCO	40% Abatement, 100% Payment by Service Receiver	23,74,906
2015-16	Rent a Cab	Body Corporate	IOCL	40% Abatement, 100% Payment by Service Receiver	5,39,021
2015-16	Rent a Cab	Body Corporate	ONGC	40% Abatement, 100% Payment by Service Provider	15,47,598
2015-16	Rent a Cab	Non Corporate	Non Corporate	40% Abatement, 100% Payment by Service Provider	11,73,792
2015-16	Works Contract	Body Corporate	ONGC	100% By Service Provider	13,80,748
2016-17	Manpower	Body Corporate	Corporate	100% By Service Receiver	4,25,760
2016-17	Manpower	Body Corporate	GMDC	100% By Service Receiver	19,47,368
2016-17	Manpower	Body Corporate	RBI	100% By Service Receiver	53,15,526
2016-17	Manpower	Non Corporate	Non Corporate	100% By Service Provider	17,44,708
2016-17	Rent a Cab	Corporate	GETCO	40% Abatement, 100% Payment by Service Receiver	44,37,718
2016-17	Rent a Cab	Corporate	IOCL	40% Abatement, 100% Payment by Service Receiver	15,84,511
2016-17	Rent a Cab	Corporate	ONGC	40% Abatement, 100% Payment by Service Provider	31,54,291
2016-17	Rent a Cab	Non Corporate	Non Corporate	40% Abatement, 100% Payment by Service Provider	33,53,769
2016-17	Service Income	Corporate	ONGC	100% By Service Provider	71,181
2016-17	Works Contract	Corporate	ONGC	100% By Service Provider	9,63,454
2017-18	Manpower	Corporate	RBI	100% By Service Receiver	18,73,870
2017-18	Rent a Cab	Corporate	GETCO	40% Abatement, 100% Payment by Service Receiver	18,44,660
2017-18	Rent a Cab	Corporate	IOCL	40% Abatement, 100% Payment by Service Receiver	8,81,562
2017-18	Rent a Cab	Corporate	ONGC	40% Abatement, 100% Payment by Service Provider	13,18,702
2017-18	Rent a Cab	Non Corporate	Non Corporate	40% Abatement, 100% Payment by Service Provider	8,25,206
2017-18	Service Income	Corporate	ONGC	100% By Service Provider	23,727
2017-18	Works Contract	Corporate	ONGC	100% By Service Provider	4,05,463
				Grand Total	5,81,94,726

12.1 It is evident from the above reconciliation table that during the relevant period the respondent have provided services majorly to Body Corporates, and they have



availed the benefit of abatement/exemption wherever available to them. However, it is also apparent that in some cases although they are eligible for abatement/exemption, they have paid Service Tax at full rate, i.e without availing the benefit of abatement/exemption. Hence, the excess amount of Service tax accrual was due to the fact that the respondent have paid excess Service Tax in some cases. Hence, the contention of the appellant department in this regard is not tenable.

13. In view of the above discussions, I am of the considered view that the appeal filed by the appellant department is devoid of merits and therefore the same is dismissed.

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)
Dated: 28 August, 2023

सत्यापित/Attested:

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



By REGD/SPEED POST A/D

1. The Assistant Commissioner
Central GST, Division-Mehsana,
Commissionerate-Gandhinagar.

APPELLANT

2. M/s Shree Om Enterprise,
Highway Road, Behind Revera Guest House,
Mehsana, Gujarat-384002.

RESPONDENT

Copy to: -

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

