आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065- टेलेफैक्स07926305136

DIN: 20230164SW000000A832

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/808/2022-APPEAL/7223-27

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-107/2022-23**
दिनाँक Date : **11-01-2023** जारी करने की तारीख Date of Issue 12.01.2023

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **GST-06/D-VI/O&A/47/pawan/AM/2021-22** दिनाँक: **24.01.2022**, issued by Deputy/Assistant Commissioner, CGST, Division-VI, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

   M/s Pawan Rameshwar Kushwaha,
   A-202, Jay Dwarkeshree Flat, Near Pavan Flat,
   Bhadaj, Ahmedabad-382330

2. Respondent
   The Deputy/ Assistant Commissioner, CGST, Division-VI, Ahmedabad North , 7th Floor, B D Patel House, Nr. Sardar Patel Statue , Naranpura, Ahmedabad - 380014

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर 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।
(i) 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 :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने 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 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.

(क) 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।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

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।

(c) 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.

(1) 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 भीतर मूल–आदेश एवं अपील आदेश की दो–दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 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 सेवाकर 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 :-

(क) उक्तलिखित परिच्छेद 2 (1) क 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

(a) 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 in para-2(i) (a) above.

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 संशोधित की अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर 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.

(7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) 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.

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

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

ORDER-IN-APPEAL

The present appeal has been filed by M/s. Pawan Rameshwar Kushwaha, A-202, Jay Dwarkeshree Flat, Near Pavan Flat, Bhadaj, Ahmedabad – 382330 (hereinafter referred to as "the appellant") against Order-in-Original No. GST-06/D-VI/O&A/47/Pawan/AM/2021-22 dated 24.01.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division VI, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant is holding PAN No. BMMPK5622D. On scrutiny of the data received from the CBDT for the Financial Year 2015-16, it was noticed that the appellant had earned an income of Rs. 14,47,639/- during the FY 2015-16, which was reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" or "Total amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)" by the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but has neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant was called upon to submit copies of Balance Sheet, Profit & Loss accounts, Income Tax Returns, Form 26AS, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant was issued a Show Cause Notice No. GST-06/04-1129/O&A/Pawan/2020-21 dated 25.03.2021 demanding Service Tax amounting to Rs. 2,01,441/- for the period FY 2015-16, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; recovery of late fees under Rule 7C of the Service Tax Rules, 1994; and imposition of penalties under Section 76, Section 77(1) & Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 64,908/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period FY 2015-16 and dropped remaining demand of Service Tax extending benefit of Notification No. 33/2012-ST dated 20.06.2012. Further (i) Penalty of Rs. 64,908/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(a) of the Finance Act, 1994 for failure to taking Service Tax Registration; (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(c) of the Finance Act, 1994 for failure to furnishing information and produce documents called for by the department; and (iv) Penalty of Rs. 40,000/- was imposed on the appellant under Section 70(1) of the Finance Act, 1994 for not furnishing service tax returns.

Being aggrieved with the impugned order, the appellant preferred the present appeal on the following grounds:

- The appellant was engaged in fittings of tiles especially in newly constructed houses. The appellant is small daily wager, wherein he gets work of floor tiles fitting or kitchen platform marble fitting etc. of various newly constructed residential units. He is given work of tiles fitting by various contractors orally. Those contractors call him personally and ask him to fit the tiles of floor or kitchen platform of residential unit which is nothing but Original Work of fitting kitchen, wall, and floor tiles only. He is expert in floor tiles fitting, kitchen platform marble fitting, roof tiles, pebble tiles, ceiling tiles, glass tiles and wall tiles, etc.

- The appellant is providing services which were exempted vide Entry No. 14 of the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 as amended. Work done by the appellant is nothing but original work related to residential unit. The term original works have been defined under the Finance Act, 1994 and the same is reproduced below:

> *"Original work 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"*

- The service provided by him is nothing but the original work and the said service is exempt vide mega exemption notification. The said fact can also be verified from the sample invoices given by the appellant and the same are also reflected in OIO.

- Without prejudice to the above submission, even if it is assumed that the allegations by the adjudicating authority are true and correct and the appellant is required to discharge the Service Tax, the service provided by the appellant is Works Contract Service and taxable value is calculated at 70% on the basis of Service Tax Valuation Rules, 2006 under Rule 2A, the value comes to approximately 10 lakhs which is below the SSI limit and the said is exempt.

- It is to submit that the total income shown by the appellant is 14 lakhs and the 70% of the same comes to approximately 10 lakhs, therefore, again the said taxable turnover is almost below the exemption limit. Further in this regard, it is to submit that, it is settled law of principal that for the purpose of determining the aggregate value for exemption under Notification No. 6/2005-ST, only the net value received i.e. after the abatement under Notification No. 1/2006-ST or after considering Service Tax Valuation Rules, 2006 is to be considered. In this case according to the Rule 2A of the Service Tax Valuation Rules, 2006 the service portion would be 70% of the total value (as alleged by the

adjudicating authority). Thus, it is to submit that, assuming the allegation made by adjudicating authority is true and the appellant is require to discharge service tax at 70% value of the total receipts, the said is comes to around 10 lakhs which is almost below exemption limit. In this regard, the appellant would rely on the following case laws:

- Aryavrat Housing Constructions (P) Limited, Bhopal - 2018 (3) TMI 628 - CESTAT New Delhi
- Neelam Singh and Raj Narain Singh - 2017 (5) TMI 1390 CESTAT Allahabad
- MIs. Wolfra Tech (P) Ltd - 2019 (5) TMI 1136 - CESTAT Bangalore
- Alok Pratap Singh, Anuj Pratap Singh, Kalim Ahmad, Alauddin & Mohod Mustaq - 2018 (11) TMI 620 CESTAT Allahabad
- Shri Ashok Kumar Ilishra - 2018 (2) TII 573- CESTAT, Allahabad

- As mentioned in the facts in detailed that demand raised through the Show Cause Notice is only on the basis of data available from the CBDT i.e. ITR/ 26AS of the Appellant, without proper investigation or appreciation and while computing the tax liability on the basis of Form 26AS, no explanation had been asked from the appellant in respect of the nature of payments recorded in the same and the entire proceedings vide issuing Show Cause Notice has been initiated for the FY. 2015-16. The contention of the adjudicating authority that every payment which is recorded in Form 26AS or income tax return is service income and liable to tax, is baseless, erroneous and lacks merit. For the same the appellant would like to rely on below mentioned cases:

a) Indus Motor Company Vs CCE, Cochin - 2007-TIOL-1855-CESTAT Bang
b) Synergy Audio Visual Workshop Pvt. Ltd. Vs CST Bangalore -2008-TIOL-809-CESTAT-BANG
c) Kush Constructions Vs CGST NACIN - 2019 (34) GSTL 606
d) Luit Developers Private Limited - 2022 (3) TMI 50 by CESTAT Kolkata.
e) Quest Engineers & Consultant Pvt. Ltd. - 2021 (10) TMI 96

- Without prejudice to the above written submissions, without admitting but assuming, the appellant submits that the show cause notice is erroneous in as much as it demands Service Tax by invoking extended period. It is to submit that major portion of demand in the Show Cause Notice is being hit by the bar of limitation.

- Merely failure to pay Service Tax on account of interpretation of law would not be a case where the Revenue can invoke extended period of limitation. The impugned order confirming demands and penalties by invoking extended period should be dropped on this ground.

- Since the demand of duty is not sustainable either on merit or on limitation, therefore there is no question of any interest and penalty as held by the Hon'ble Supreme Court of India in the case of M/s. HMM Limited.

- Appellant would like to submit that, It is settled law that penalty under Section 78 of the Finance Act, in other words if there has been fraud or willful mis statement or suppression of facts with intend to evade payment of service tax by the appellant, then and only then penalty under Section 78 could be imposed 1994 could be imposed only if demand of service tax could be sustained under proviso to Section 73(1) of the Finance Act 1994. It can be said that the present case is not the case of fraud, suppression, willful misstatement of facts, etc. Hence penalty under section 78 of the Finance Act, 1994 cannot be imposed. The demand is liable to be dropped on this ground also. In this regard, they relying on the Hon'ble Supreme Court's below mentioned judgements:

  i. Uniworth Textile Limited - 2013 (288) ELT 161 (SC)
  ii. Rajasthan Spinning & Weaving Mills – 2009 (238) ELT 3 (SC)
  iii. Tamil Nadu Housing Board – 1994 (74) ELT 9 (SC)
  iv. Cosmic Dye Chemical – 1995 (75) ELT 72 (SC)

- Without prejudice to other contentions, it is to submit that no mens rea can be attributed to the appellant merely failure to pay Service Tax on account of interpretation of law. In absence of mens rea, merely for the venial breach of the provisions of law, penalty cannot be imposed. There is no element of fraud, willful mis-statement or suppression of facts with intent to evade payment of service tax, as all the income received by them were accounted for in the books of accounts. The appellant wish to rely upon following decision of the Hon'ble Supreme Court of India.

  i. Hindustan Steel Limited vs. State of Orissa - 1978 (2) ELT J159 (SC)
  ii. Gujarat Guardian Limited - 2016 (46) STR 737 (Tri. - Ahmd.)
  iii. Fascel Limited - 2017 (52) STR 434 (Tri. - Ahmd.)

- On the basis of above grounds, the appellants requested that the impugned order confirming demand of service tax, interest thereon and imposing penalties be quashed and set aside.

4. Personal hearing in the case was held on 06.01.2023. Ms. Neelam Kalwani and Ms. Kiran Tahelani, both Chartered Accountants, appeared on behalf of the appellant for personal hearing. They reiterated submission made in appeal memorandum. They also argued the case on limitation by stating that there was no intention for evasion of service tax.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents 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 against the appellant along with interest and penalty, in the facts and circumstance of the case is legal and proper or otherwise. The demand pertains to the period FY 2015-16.

6. I find that main contention of the appellant is that (i) their services were exempted vide Entry No. 14 of the Mega exemption Notification No. 25/2012-ST dated 20.06.2012; (ii) work done by them is nothing but original work and thus, they are required to discharge the Service Tax on 70% of the receipt value as per the Service Tax (Determination of Value) Rules, 2006.

6.1 For ease of reference, I reproduce the relevant provision under Entry No. 14 of Notification No. 25/2012-ST dated 20.06.2012, as amended, and Service Tax (Determination of Value) Rules, 2006, which reads as under:

Notification No. 25/2012-ST dated 20.06.2012

"14. Services by way of construction, erection, commissioning, or installation of original works pertaining to, -

(a) ....

(b) a single residential unit otherwise than as a part of a residential complex;"

Service Tax (Determination of Value) Rules, 2006.

*"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 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;"

6.2 In view of the above legal provisions, I find that the services provided by the appellant do not fall under Sr. No. 14(b) of the Notification No. 25/2012-ST dated 20.06.2012, as the appellant has not constructed any residential house. The service provided by the appellant is finishing services like flooring, glazing and wall tiling, etc. of an immovable property which can be classifiable as Construction Service or as Works Contract Service.

6.3 I find that the appellant have contended that they are eligible for benefit under Rule 2(A)(ii) of the Service Tax (Determination of Value) Rules, 2006. In this regard, on verification of the Profit & Loss Account for the FY 2015-16, I find that the appellant have shown income of Rs. 9,42,631/- under the head 'Sale of Services – Tiles Fittings' and income of Rs. 5,05,008/- under the head 'Sales of Materials'. I also find that the appellant shown expense of Rs. 3,97,635/- under the head 'Purchases'. On verification of the invoices as reflected in impugned order, it appears that the appellant have charged per Sq. feet for tiles as well as also for labour. Further, as per the Form 26AS, the appellant have received an amount of Rs. 6,00,000/- from M/s. Sorath Builders under Section 194C. The impugned order has not taken into consideration these transactions.

6.4 I also find that the adjudicating authority has confirmed the demand of service tax after arriving at conclusion that the appellant have provided Works Contract Service. In this regard, I find that if the appellant have provided Works Contract Service, the Service Tax was required to be paid by them on 70% or 40% of the gross value as per Rule 2A of Service Tax (Determination of Value) Rules, 2006. However, I find that while issuing the impugned order, the Service Tax has been confirmed on the entire amount of value of service without considering the abatement provided under Rule 2A of Service Tax (Determination of Value) Rules, 2006 for the said service category. Thus, I find that the impugned order has been issued to the appellant without appreciation of facts available on record and without correct quantification of Service Tax payable, which is not legally tenable.

6.5 In view of the above, I am of the considered view that the adjudicating authority was required to give adequate and ample opportunity to the appellant for producing the documents in his favour in backdrop of the situation that SCN has been issued only on the basis of details received from the Income Tax department, without even specifying the category of service and it is only thereafter, the impugned order was required to be passed. I also find that the appellant has taken plea that the demand in the Show Cause Notice is hit by the bar of limitation. I also find that this contention was not raised earlier and were made during the appeal proceedings.

9. Therefore, I am of the considered view that it would be in the fitness of things and in the interest of natural justice that the matter is remanded back to the adjudicating authority to consider the submission of the appellant, made in the course of the present appeal, and after proper verification of the documents of the appellant and thereafter, adjudicate the matter.

10. In view of the above discussion, I remand the matter back to the adjudicating authority to consider the issue of abatement and limitation and pass a speaking order after following the principles of natural justice. The appellants are also directed to submit all the relevant documents to the adjudicating authority within 15 days of receipt of this order.

11. अपील कर्ता 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.

(Akhilesh Kumar)
Commissioner (Appeals)

Date : 11.01.2023

Attested

(R. C. Maniyar)
Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,

M/s. Pawan Rameshwar Kushwaha,
A-202, Jay Dwarkeshree Flat,
Near Pavan Flat, Bhadaj,
Ahmedabad – 382330

Appellant

The Assistant Commissioner,
CGST, Division-VI,
Ahmedabad North

Respondent

Copy to :

1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
2) The Commissioner, CGST, Ahmedabad North
3) The Assistant Commissioner, CGST, Division VI, Ahmedabad North
4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North (for uploading the OIA)
5) Guard File
6) PA file