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: 20230164SW0000222BF1

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/702/2022-APPEAL /7540 -45

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-115/2022-23**
दिनाँक Date : **18-01-2023** जारी करने की तारीख Date of Issue 24.01.2023

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

ग Arising out of Order-in-Original No. **MP/27/dem/AC/21-22/HNM** दिनाँक: **01.02.2022**, issued by Deputy/Assistant Commissioner, Division-II, CGST, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

   M/s Jaydeep Agency Corporation,
   B-814, 8th Floor, B.G. Tower, Opposite Delhi Darwaja,
   Shahibaug, Ahmedabad-380004

2. Respondent
   The Assistant Commissioner, CGST,Division-II, Ahmedabad North , 3rd Floor,Sahjanand Arcade,Opp. Helmet Circle, Memnagar, Ahmedabad – 52.

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 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।

(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।

(ii) 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 डयूटी 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 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 :-

(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

M/s. Jaydeep Agency Corporation, B-814, 8th Floor, B. G. Tower, Opposite Delhi Darwaja, Shahibaugh, Ahmedabad-380004 (hereinafter referred to as '*the appellant*') have filed the instant appeal against the O-I-O No. MP/27/Dem/AC/21-22/HNM dated 01.02.2022 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-II (Naroda Road), Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant were holding Service Tax Registration No.ACIPP6157BST001 for providing 'Works Contract Service'.

2. The facts of the case, in brief, are that the appellant were providing Electrical Installation and Fitting services to various body corporate. Based on the information received from the Airport Authority, Indore and Mumbai, an inquiry was undertaken on the appellant and documents were called for. Scrutiny of the documents submitted by the appellant vis-à-vis the ST-3 Returns filed during the F.Y. 2014-15 to F.Y. 2017-18 (upto June, 2017) revealed that the appellant had declared the activity undertaken by them as 'original works' and charged service tax on 40% of gross value of works contract, in terms of Rule 2A (ii) (A) of the Service Tax (Determination of Value) Rules, 2006. Considering the nature of work carried out by the appellant and the invoice wise details submitted by the appellant for the F.Y. 2014-15 to F.Y. 2017-18 (upto June, 2017), it appeared that the said activity does not qualify as 'Original Works'. Therefore, the appellant were required to discharge service tax on 70% of the gross value in terms of Rule 2A (ii) (B) of the Service Tax (Determination of Value) Rules, 2006 and liability to pay service tax on service provider in terms of Sr.No.09 of Notification No.30/2012-ST dated 20.06.2012, would be 50% of the total tax. Thus, short payment of service tax amounting to **Rs.35,86,550/-** was noticed.

2.1 A Show Cause Notice (SCN) No. V.44/03-87/Dem-Jaydeep Corporation/ 2020-2021 dated 18.12.2020 was therefore issued proposing recovery of service tax demand to the tune of Rs.35,86,550/- alongwith interest under Section 73(1) & 75 respectively. Penalties under Section 76, Section 77 and Section 78 of the Finance Act, 1994 were also proposed.

2.2 The said SCN was adjudicated vide the impugned order, confirming the demand alongwith interest. Penalty equal to tax confirmed and penalty of Rs.10,000/- was imposed on the appellant under Section 78 and 77 respectively.

3. Being aggrieved by the impugned order, the appellant has preferred the present appeal contesting the demand, primarily on following grounds:-

- Some of the services have been provided to sectors like Western Railway, Airport Authority of India, Kendriya Vidhyalaya which are exempted vide Notification No.25/2012-ST. Still they claim to have paid service tax after claiming abatement on 60% where original work was involved, abatement of 30% where maintenance & Repair was provided and wherever only service contract was involved tax was paid on full value. All these facts were not considered by the adjudicating authority and the service tax was demanded on full value of such invoices instead of demanding differential duty. Thus, the adjudicating authority has not examined

the copies of work contract or invoice to rebut the contentions of the appellant claiming exemption.

- In para 16.6 of the impugned order, the adjudicating authority has held that the appellants should have filed refund if they erroneously paid service tax on exempted services. If the appellants have paid the service tax mistakenly which was not required to be paid, the same becomes an unconstitutional levy and the appellants could claim refund even now also. But the issue is now the tax is sub-judice before the adjudicating authority and unless the adjudicating authority gives any finding on the availability of exemption, the appellants could not have filed refund. Thus, the department has arbitrarily raised the demand on all sorts of services provided by the appellants.

- The demand is time barred as there is no suppression of facts with intention to evade payment of tax. No classification has been declaration for the services provided as in the present era, there is no classification list. Further, the ST-3 returns does not have any columns where the information regarding each invoice could be declared. When there is no suppression of facts, the SCN issued on 18.12.2020 for the demand from F.Y. 2014-15 to June, 2017 is time barred. They placed reliance on following decisions:-
  - Mahindra & Mahindra Ltd-2018 (11) GSTL 126 (Guj);
  - Continental Foundation Jt. Venture -2007 (216) ELT 177 {SC}
  - Cadila Pharmaceuticals Limited -2017 (349) ELT 0694 (Guj)

- Service tax was paid at different rates depending on the nature of the services provided under each invoice. All the invoices issued by the appellants during the disputed period were not pertaining to "original works", so on the entire value the appellants have not claimed abatement while discharging service tax hence, for this reason the show cause notice demanding service tax treating the entire value for the disputed period as the value relating to the services provided for "maintenance or repairs services" is erroneous. They placed reliance on Commissioner (Appeals) OIA No: AHM-EXCUS-002-APP-242-19-20 dated 29.03.2019 passed in favour of N. J. Devani Builders Pvt. Ltd. They claim that since they have done the work of installation of electrical fittings, etc which are done in the new constructions hence the ratio of the said OIA is squarely applicable to the facts.

- The penalty under Section 78 of the Finance Act, 1994 is required to be set aside as the demand itself is not sustainable. Secondly, the demand for the differential duty for the extended period is not maintainable. When there is no malafide intention to evade payment of service tax, the extended period cannot be invoked for demanding service tax for larger period and penalty under section 78(1) cannot be imposed. Since the differential amount of service tax, was already paid even though, under protest, imposition of penalty is not warranted as it is only a question of interpretation which the department differs, hence, there is no question of penalty. They placed reliance on following decisions
  - Sunraj Construction -2016 (42) STR 395 (Tri-Mum),
  - Sen Brothers- 2014 (33) STR 704 (Tri-Kol).

4. Personal hearing in the matter was held on 06.01.2023. Shri Bhavesh T. Jhalawadia, Chartered Accountant, appeared on behalf of the appellant. He re-iterated the submissions made in the appeal memorandum. He also filed an additional written submission, wherein they reiterated the submissions of the grounds of appeal. They also stated that the adjudicating authority has not examined the Invoice No.09/2014-15, Invoice No.16/2014-15, Invoice No.05/2015-16, Invoice No.17/2015-16 and Invoice No.63/2015-16, where supply of material is separately identifiable but still their value was considered while computing the tax. Thus, without verifying the nature of work carried out, the demand was made under Rule 2(ii)(B) of the Service Tax (Determination of Value) Rules, 2006, which is arbitrary.

5. I have carefully gone through the facts and circumstances of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum, the submissions made at the time of personal hearing as well as the submissions made in the additional written submission. The issue to be decided under the present appeal is whether the activities carried out by the appellant should be considered taxable under 'Original Work' or under 'Maintenance & Repair service or repair or reconditioning or restoration or servicing of any goods' and consequently whether the impugned order, confirming the demand against the appellant and imposing penalties, is legal and proper or otherwise? The period involved in the dispute is F.Y. 2014-15 to F.Y. 2017-18 (upto June, 2017).

6. Before taking up the issue on merits, I will first examine the contention of the appellant that the demand is time barred. The appellant have claimed that after negative list regime, there was no need to classify the services in the returns hence suppression cannot be alleged. I do not agree with such contention because though classification was done away with, but to determine the tax liability the appellant was required to make self-assessment of the services provided. While taking abatement, it was obligatory on them to ascertain whether the services rendered by them falls under 'original works' or not, which I find they failed to do so. It is also a fact that the short-payment of service tax was unearthed during the inquiry conducted based on the information received from Airport Authority, Indore and Mumbai. The appellant were claiming ineligible abatement which came to be noticed through the invoices produced by the appellant during the investigation, which otherwise would not have been detected through ST-3 Returns. I, therefore, find that the suppression has been rightly invoked and the demand is sustainable on limitation.

7. On the issue whether demand is sustainable on merits or not, it is observed that clause (55) of Section 65B of the Finance Act, 1994, defines **'Works Contract'** as 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 moveable or immovable property or for carrying out any other similar activity or a part thereof, in relation to such property. The present demand was issued based on the information received from Airport Authority, Indore and Mumbai. The appellant were carrying out electrical installation and fitting for various body corporate, on which they were paying service tax at applicable

rate on 40% on the value of Works Contract after claiming abatement of 60%, in terms of Rule 2A(ii) (A) of the Service Tax (Determination of Value) Rules, 2006. The department, however, contended that the said activity does not qualify as 'Original Works', therefore, the appellant were required to discharge service tax on 70% of the gross value in terms of Rule 2A (ii) (B) of the Service Tax (Determination of Value) Rules, 2006 and liability to pay service tax on service provider in terms of Sr.No.09 of Notification No.30/2012-ST dated 20.06.2012, would be 50% of the total tax.

7.1 To examine whether the service tax liability discharged by the appellant is correct or otherwise, I will refer to Rule 2A of the Service Tax (Determination of Value) Rules, 2006, relevant text of which is reproduced below:-

*"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;

(B) in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy percent of the total amount charged for the works contract;

*(C) in case of other works contracts, not covered under sub-clauses (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property , service tax shall be payable on **sixty per cent.** of the total amount charged for the works contract;*

In terms of Explanation-1 (a) to Rule 2A of the Service Tax (Determination of Value) Rules, 2006, 'Original Work' is defined as;

*(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;

7.2 So, in terms of above Rule 2A (ii) (A) of Service Tax (Determination of Value) Rules, 2006, where the works contract is entered into for execution of original works, service tax shall be payable on 40% of the total amount of charged. However, in terms of Rule 2A (ii) (B) of Service Tax (Determination of Value) Rules, 2006, where works contract entered is other than 'original works' but is for 'repair and maintenance or reconditioning or restoration or servicing of any goods' or for 'maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property', the service tax shall be payable on 70% of the total amount charged for the works contract.

7.3 On going through some of the copies of the contracts submitted by the appellant, I find that the appellant were awarded the contracts for following:-

- Carrying out electrical fittings, electrical installations work for Margarwada GIS sub-station/ SAC-Ahmedabad/ ONGC- Panvel; Contracts for Supply,
- Installation and Commissioning of Earth pit including supply of all the materials such as earthing, electrode, moisture booster and civil material, supply, laying & termination of G.I earthing strip for IFFCO;
- Service contract for operation and maintenance of Electrical Installations at SAIL;
- Contract for Electrification of S&T structure at various locations between Viramgam & Sukhpur Railway Station which included supply of material;
- Contract for Installation, Commissioning & Testing of new 11 KV Circuit Breaker panel at IFCOM sub-station ONGC Ahmedabad;
- Design, Supply, Installation, Testing and Commissioning of LED Flood lights at Chennai Airport and Construction of additional Parking Stand at Mangaluru International Airport etc.

From the nature of above works contract, it appears that some of the contracts awarded were for commissioning or installation of equipment or structures, which I find are purely covered under the definition of 'original work'. Therefore, the work carried out by the appellant cannot be considered to the activity of maintenance and repair or reconditioning or restoration or servicing of any goods, as alleged in the SCN. I find that the adjudicating authority has not properly examined the nature of each contract before concluding that the activity carried out by the appellant does not qualify as 'original work'. He also failed to give any findings rebutting the claim of the appellant that electrical installation can be installation of equipment also. Thus, I find that the impugned order to that extent is a non-speaking order, as the entire activities carried out by the appellant were summarily classified under Rule 2A (ii) (B) of Service Tax (Determination of Value) Rules, 2006 .

8. Another contention raised by the appellant is that the services provided to sectors like Western Railway, Airport Authority of India, Kendriya Vidhyalaya are exempted vide Notification No.25/2012-ST. Relevant text of Notification is reproduced below:-

[Notification No. 25/2012-S.T., dated 20-6-2012]

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

(a) ***a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;***
(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
(d) canal, dam or other irrigation works;
(e) ***pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or***
(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act;

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

(a) ***an airport, port or railways, including monorail or metro;***
(b) a single residential unit otherwise than as a part of a residential complex;
(c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
(d) post-harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or
(e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

8.1 It is observed that the adjudicating authority has denied the above exemption to the appellant on the bizarre argument that the appellant could have opted to file refund, if they have paid service tax on such exempted services. I find such argument as weird and unacceptable. Exemption cannot be denied merely because the appellant have right to claim refund, which he can exercised only when the matter is legally settled in their favour. Whether the activity carried out by the appellant is covered under exemption notification has to be examined with supporting documents particularly when the same has been claimed by the appellant. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. Similarly, whether the claimant would be entitled to the benefit of exemption clearly needs to be examined. The onus of denying or allowing the benefit of exemption shall lie on the adjudicating authority who shall record proper findings justifying the same. The adjudicating authority in the instant case has not examined the claim of exemption made by the appellant hence has clearly vitiated the proceedings by passing a non-speaking order. So to that extent also, I agree with the contention of the appellant that the impugned order passed is a non-speaking order.

Further, the appellant have strongly contended that the adjudicating authority has not examined the Invoice No.09/2014-15, Invoice No.16/2014-15, Invoice

No.05/2015-16, Invoice No.17/2015-16 and Invoice No.63/2015-16, where supply of material is separately identifiable but still their value was considered while computing the tax. The details submitted by the appellant are reproduced below:-

Invoice No.	Annexure No. to SCN	Value of Material	Value of Labour	Total Value	S.Tax demanded	Remarks
1	2	3	4	5	6	7
09	I F.Y.2014-15	2,97,540	35,865/-	3,33,405/-	14,423/-	S.Tax computed on column (3)
16	I F.Y.2014-15	34,808/-	10,113/-	44,921/-	2,776/-	S.Tax computed on column (3)
05	II F.Y.2015-16	2,13,400/-	0	2,13,400/-	10,830/-	S.Tax computed on column (3)
17	II F.Y.2015-16	53,029/-	46,285/-	99,314/-	5,040/-	S.Tax computed on column (3)
63	II F.Y.2015-16	64,735/-	26,448/-	91,183/-	4,628/-	S.Tax computed on column (3)

I find that in terms of Explanation-1(b) to Rule 2A(ii)B of the Service Tax (Determination of Value) Rules, 2006, "total amount" shall be 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. In the instant case, since some of the activities carried out by the appellant fall under the category of 'original works', hence, the aspect whether amount charged for goods was deducted or not needs to be examined by the adjudicating authority after evaluating each contract.

10. In view of the above discussion, keeping all the issues open, I, therefore, remand the case back to the adjudicating authority for examination of the submissions made by the appellant. The appellant is, therefore, directed to submit all the relevant documents / details to the adjudicating authority, including those submitted in the appeal proceedings, in support of their contentions. The adjudicating authority shall decide the case afresh on merits and accordingly pass a reasoned order after following the principles of natural justice.

अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stand disposed off in above terms.

(अखिलेश कुमार) 16 January 2022
आयुक्त(अपील्स)

Date: 01.2023

Attested
Rekha.Nair
(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,

M/s. Jaydeep Agency Corporation, - **Appellant**
814, 8th Floor, B. G. Tower,
Opposite Delhi Darwaja,
Shahibaugh Road,
Ahmedabad-380004.

The Assistant Commissioner - **Respondent**
CGST, Division-II (Naroda Road),
Ahmedabad North,
Ahmedabad

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North. (For uploading the OIA)
4. Guard File.
5. The Superintendent (System), CGST, Appeals, Ahmedabad, for uploading the OIA on the website.