



**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- टेलीफैक्स 07926305136



DIN: 20230264SW0000555F4A

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/1788/2022-APPEAL / 1788-72
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-132/2022-23  
दिनांक Date : 25-01-2023 जारी करने की तारीख Date of Issue 01.02.2023  
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/07/Rohit/AM/2021-22 दिनांक:  
28.04.2022, issued by Deputy/Assistant Commissioner, CGST, Division-VI, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

**M/s Rohit Mehta,  
J-103, Nilkant Orchid, Opposite St. Ann's School,  
Inside Starling City, Bopal,  
Ahmedabad-380058**

2. Respondent

**The Deputy/ Assistant Commissioner, CGST, Division-VI, Ahmedabad  
North , 7<sup>th</sup> 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 :

(i) केन्द्रीय चरपादन शुल्क अधिनियम, 1994 की धारा अलाव नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अर्थात् 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, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(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.



(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 मामले 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 क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित हो समय पर या बाद में मिल अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हों।

(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.

(i) केन्द्रीय उत्पादन शुल्क (अपील) नियमवली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इप-8 में दो प्रतियों में प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मাস के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ साथ इ. का मुख्यालय के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के समूह के साथ टैआर-8 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 रुपये या उससे कम हो तो 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 सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(i) 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, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की परिचय क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> मंश, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद - 380004

(ख) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhawan, Asarwa, Giridhar 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. Registrar of a branch of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate 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 मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर 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 निंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यावधि) नियम, 1982 में निहित हैं।

Attention is 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 अपीलों 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 जमा 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 8 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो मांग 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. Rohit Mehta, J-103- Nilkant Orchid, Opposite St. ANN's school, Inside Sterling City, Bopal, Ahmedabad- 380058 (hereinafter referred to as '*the appellant*') against Order-in-Original No.GST-06/D-VI/O&A/07/Rohit/AM/2021-22 dated 28.04.2022 (for brevity referred to as '*the impugned order*') passed by the Assistant Commissioner, Central Tax, CGST & Central Excise, Division-VI, Ahmedabad North (for short referred to as the '*adjudicating authority*').

2. On the basis of the data received from the Central Board of Direct Taxes (CBDT) for the period F.Y. 2014-15 and on analysis of "Sales/Gross Receipts from Services (Value from ITR)", the "Total Amount Paid/Credited under Section 194 (C), 194(H), 194(I) and 194(J)" and "Gross Value of Services Provided", it was noticed that substantial income was earned by the appellant. However, they did not obtain the service tax registration and did not pay service tax thereon. Letters were issued to the appellant to explain the reasons for non-payment of service tax and to provide certified documentary evidences for the F.Y. 2014-15. However, neither any documents nor any reply was submitted by them for non-payment of service tax on such receipts. Therefore, the service tax was calculated on the basis of 'Value of Sales of Service under Gross Receipts from services' declared in ITR, considering the said amount as taxable income. It appeared that the appellant had not discharged service tax amounting to Rs.6,28,843/- on total income of Rs.50,87,727/- reflected in the ITR.

2.1 A Show Cause Notice (SCN) bearing F.No.GST-06/04-581/O&A/Rohit/2020-21 dated 28.09.2020 was, therefore, issued to the appellant proposing the recovery of service tax amount of Rs.6,28,843/- for the period F.Y. 2014-15 alongwith interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalty under Section 78 and penalties under Section 70(1) & Section 77 of the Finance Act, 1994 were also proposed.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.6,28,843/- was confirmed alongwith interest. Penalty of Rs.6,28,843/- under Section 78 was imposed alongwith penalty of Rs.40,000/- under Section 70(1) and penalty of Rs.10,000/- under 77 of the Finance Act 1994.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal on the grounds elaborated below:-



- The services rendered are proposed to be considered as 'taxable service' under Section 65 of the F.A., 1994. The demand pertains to F.Y. 2014-15 and since Section 65 ceases to apply w.e.f. 01.07.2012, the demand is liable to be set-aside.
  - The required documents were submitted by the appellant on 08.09.2020 i.e. prior to issuance of SCN, which were not considered and the entire proceedings were initiated based on the information in Form-26AS.
  - The appellant is a sub-contractor of the main contractor and undertakes Construction of Canal and Irrigation Works service through petty contractors and small construction contractors. These petty contractors charged and recovered the consideration from the appellant on the basis of activities assigned, which was inclusive of the material and labour. Since the cost incurred by the appellant for sub-contracted activities is significantly attributable to labour charges and minimal amount is attributed to goods/materials and, therefore, the accountant has accounted all these expenses as Labour charges as per the General Accounting Principles. Therefore, the principle nature of Works Contract Service cannot be altered to Labour services.
  - Even for the services provided by the Labour Contractor, the liability shall be on the recipient of service in terms of Notification No.30/2012-ST dated 20.06.2012. Further, in identical issue, the A.C., CGST, Div-VII, Ahmedabad South had dropped the demand.
  - All the information relied by the adjudicating authority is already on the public domain and since the appellant has provided all the required information and documents during investigation and adjudication process, suppression cannot be invoked. Only the copy of Work Contract issued by M/s. M.V. Omni Projects (India) Ltd could not be produced since it is facing Corporate Insolvency Resolution Process in NCLT.
  - As issue pertains to interpretation of law, extended period cannot be invoked.
  - No penalty imposable when the demand itself is liable to be dropped. Also no question of interest arises.
  - Maximum penalty imposed u/s 70 is Rs.20,000/-, whereas the adjudicating authority has imposed a penalty of Rs.40,000/- is grossly erred.
  - As the appellant was not liable to obtain service tax registration hence the penalty u/s 77 does not arise.
4. Personal hearing in the matter was held on 18.01.2023. Shri Vikas Agarwal, Chartered Accountant, appeared on behalf of the appellant. He reiterated the



submissions made in the appeal memorandum. He further stated that the demand is time barred even by invoking extended period of limitation. He submitted the synopsis of the case and the time line justifying why the extended period cannot be invoked.

5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as the submissions made at the time of personal hearing. The issues to be decided in the present appeal are as to whether;

- (i) The demand raised vide SCN dated 28.09.2020 for the F.Y.2014-15, is time barred or otherwise?
- (ii) The receipt of income of Rs.50,87,727/- during F.Y. 2014-15 reflected in the ITR is taxable and whether the service tax demand of Rs.6,28,843/- confirmed in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise?

The demand pertains to the period F.Y. 2014-15.

6. It is observed that the appellant is not registered with the department. Further, the entire demand has been raised based on ITR data provided by Income Tax department. The adjudicating authority had, on examining the documents submitted by the appellant, observed that M/s. Sardar Sarovar Narmada Nigam Ltd. had issued a Work Order to M/s. M.V.Omni Projects (India) Ltd for the work of constructing 19 minors of Block No.42 of Jhinjhuwada Branch Canal, and O&M for 5 years. As per Form-26AS for the F.Y.2014-15, the appellant had provided services to M/s. M.V.Omni Projects (India) Ltd to the tune of Rs.43,37,727/- and services to the tune of Rs.7,50,000/- was provided to M/s. CIMCON Software (India) Pvt. Ltd. However, the appellant, vide reply dated 10.03.2022, has submitted that they had provided services to M/s. M.V.Omni Projects (India) Ltd to the tune of Rs.50,87,727/- but they did not provide a copy of any contract to substantiate the same. The adjudicating authority also held that the appellant had received an income of Rs.50,87,727/- from contract and incurred expenses of Rs.46,80,854/ towards payment of labour charges. As no expense was incurred towards purchase of material, the services rendered by the appellant cannot be classified under 'Works Contract' Service. It was further held that the services rendered were of Labour Contractor, hence not covered under 'Construction service' as claimed by the appellant. The adjudicating authority has also denied the benefit of exemption Notification No.25/2012-ST dated 20.06.2012, on the



findings that the appellant has neither provided 'Construction Services' related to Canal or 'Works Contract service' but provided labour services to the main contractor.

7. The core issue to be decided is whether the appellant were providing 'Works Contract' services to the main contractors M/s. M.V.Omni Projects India Ltd., or otherwise? It is observed that M/s. Sardar Sarovar Narmada Nigam Ltd. has issued a Work Order to M/s. M.V.Omni Projects (India) Ltd for the work of constructing 19 minors of Block No.42 of Jhinhwad Branch Canal and O&M for 5 years. The appellant have claimed that this work was subsequently sub-contracted to them by M/s. M.V.Omni Projects India Ltd, wherein they have provided construction service of canal for irrigation work as sub-contractor to M/s. M.V.Omni Projects India Ltd and earned income to the tune of Rs.50,87,727/-. They also claimed to have provided services to the tune of Rs.7,50,000/- to M/s. CIMCON Software (India) Pvt. Ltd

7.1 The appellant have provided copy of Work Order issued by M/s. Sardar Sarovar Narmada Nigam Ltd to M/s. M.V.Omni Projects India Ltd but have failed to provide a copy of contract evidencing sub-contracting of this work by M/s. M.V.Omni Projects India Ltd to them. However, in their Profit & Loss Account, they have shown an income of Rs.50,87,727/- as contract income out of which they have charged an amount of Rs.46,80,854/- towards labour charges. I find that in terms of clause (54) of Section 65B of the Finance Act, 1994 (Inserted vide Finance Act, 2012, w.e.f. 01.07.2012) "**works contract**" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any moveable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property. The appellant have neither produced copy of Work Contract entered with M/s. M.V.Omni Projects India Ltd nor any invoices raised in this regard. They also failed to produce the service contract entered with M/s. CIMCON Software (India) Pvt. Ltd., therefore, the argument that as the amount attributed to goods/materials was minimal compared to the labour charges, hence all these expenses were shown as Labour charges as per the General Accounting Principles, appears untenable. The argument that copy of Work Contract issued by M/s. M.V. Omni Projects (India) Ltd could not be produced as it is facing Corporate Insolvency Resolution Process in NCLT also appears to be mis-leading and weird because all the parties entering contract into should invariably have a copy of contracts signed. Further, there is no justification for not producing copies of invoices issued by them, as it was required to be with them only. I, therefore, agree with the



findings of the adjudicating authority that the service rendered cannot be considered as 'Works Contract' service, as defined under Section 65B(54) of the Finance Act, 1994.

8. The adjudicating authority has also denied the benefit of exemption Notification No.25/2012-ST dated 20.06.2012 on the findings that the appellant has neither provided 'Construction Services' related to Canal or 'Works Contract service' but provided labour services to the main contractor. Therefore, alternate argument put forth by the appellant is that if the services rendered are considered as provided in capacity of a Labour Contractor, then also the liability shall be on the recipient of service in terms of Notification No.30/2012-ST dated 20.06.2012. They have claimed that in identical issue, the Assistant Commissioner, CGST, Div-VII, Ahmedabad South had dropped the demand.

8.1 I find that in terms of Entry No.8 of Notification No.30/2012-ST dated 20.6.2012, as amended, for supply of manpower under Reverse Charge Mechanism, service tax liability on the service provider was 25%.

Notification No. 30/2012-ST dated 20.6.2012

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
8.	<i>in respect of services provided or agreed to be provided by way of supply of manpower for any purpose</i>	25%	75 %

However, vide Notification No.07/2015 dated 1-3-2015 with effect from 1.4.2015, the service tax liability on service provider was made 100% of service tax payable. But considering that the demand has been raised for the F.Y.2014-15, I find the benefit of RCM shall be available to the appellant.

9. On the issue of limitation, the appellant have vehemently contended that the SCN is time barred as the demand for the F.Y. 2014-15 has been issued on 28.09.2020. It is observed that the demand has been raised under proviso to Section 73(1) of the Finance Act, 1994. Relevant provision of Section 73(1) is reproduced below:

**SECTION 73. Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded. — (1) Where any service tax has not been**





*levied or paid or has been short-levied or short-paid or erroneously refunded, [Central Excise Officer] may, within [thirty months] from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :*

*Provided that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of —*

- (a) fraud; or*
- (b) collusion; or*
- (c) wilful mis-statement; or*
- (d) suppression of facts; or*
- (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,*

*by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words [“thirty months”], the words “five years” had been substituted.*

As per sub-section (6) of Section 73, relevant date i.e. the ‘five year’ period shall be counted from the date of periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed and where no periodical return is filed then the last date on which such return is to be filed.

**9.1** It is observed that the appellant was not registered with the department though they were rendering a taxable service. So, I find that this is a clear case of suppression, as evasion of tax came to the notice of department through scrutiny of data provided by CBDT as the appellant had neither obtained registration nor filed their ST-3 Returns though knowing that the service rendered by them was a taxable service. In the instant case, the due date for filing the ST-3 Returns for April, 2014 to September, 2014 was 14<sup>th</sup> November, 2014 (as extended vide Order No.02/2014-ST dated 24.10.2014) and for the period October, 2014 to March, 2015, it was 25<sup>th</sup> April, 2015. The appellant at the relevant period was not registered with the department. However, subsequently whether they have filed the ST-3 Return is also not forthcoming from the impugned order or from the appeal memorandum. Therefore, considering the last date of which such return is to be filed, I find that the demand for the period April, 2014 to September, 2014 is time barred as the notice was issued on 28.09.2020, beyond the prescribed period of limitation of five years. I, therefore, agree with the contention of the appellant to that extent that even if the suppression is invoked, the demand is time barred in terms of the provisions of Section 73 of the Finance Act, 1994.



9.2 For the remaining period from October, 2014 to March, 2015, the due date of filing ST-3 Return was 25<sup>th</sup> April, 2015. However, due to COVID pandemic, in terms of relaxation provision of Section 6 of Chapter V of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (No.2 of 2020) dated 31.03.2020, and the CBIC Notification G.S.R. No. 418(E), dated 27-6-2020, the Central Government had extended the time limit in the taxation and other laws. In terms of said Ordinance, where the time limit specified in an Act falls during the period from 20<sup>th</sup> March, 2020 to 29<sup>th</sup> September, 2020, the same shall stand extended to 31<sup>st</sup> March; 2021. In the instant case, the due date for issuing SCN was 24<sup>th</sup> April, 2020, but the same was issued on 28<sup>th</sup> September 2020. Considering the relaxation provided vide above Ordinance in the time limit for issuance of SCN, I find that the notice covering the period from October, 2014 to March, 2015 was issued well within limitation.

10. In view of the above discussion and findings, I find that the demand for the period from April, 2014 to September, 2014, is not sustainable, being time barred, while the demand covering period from October, 2014 to March, 2015 is sustainable on limitation but needs to be re-quantified alongwith interest and penalty, considering the exemption claimed by the appellant under Notification No.30/2012-ST dated 20.06.2012.

11. I, therefore, remand the matter back to the adjudicating authority for limited purpose of re-quantification of demand in view of my findings above.

12. Accordingly, the impugned order is set-aside and appeal filed by the appellant is allowed by way of remand.

अपीलकर्ता द्वारा दर्श की गई अपील का निचटारा उपरोक्त तरीके से किया जा रहा है।

The appeal filed by the appellant stands disposed off in above terms.

*[Signature]*  
 (अभिषेक कुमार)  
 आयुक्त (अपील)  
 25<sup>th</sup> January, 2023  
 Date: 1.2.2023

Attested  
*[Signature]*  
 (Rekha A. Nair)  
 Superintendent (Appeals)  
 CGST, Ahmedabad



**By RPAD/SPEED POST**

To,  
M/s. Rohit Mehta,  
J-103, Nilkant Orchid,  
Opposite St. ANN's school,  
Inside Sterling City, Bopal,  
Ahmedabad- 380058

**Appellant**

The Assistant Commissioner,  
CGST & Central Excise, Division-VI  
Ahmedabad North  
Ahmedabad

**Respondent**

**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. The Superintendent (System), CGST, Appeals, Ahmedabad, for uploading the OIA  
on the website.
- ✓ 5. Guard File.



