



सत्यमेव जयते

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- टेलिफैक्स 07926305136



DIN:20230264SW0000555F69

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1810 & 1284/2022-APPEAL / 8103-09

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-146 & 147/2022-23
दिनांक Date : 06-02-2023 जारी करने की तारीख Date of Issue 16.02.2023

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

ग Arising out of Order-in-Original No. CGST/A'bad North/Div-VII/DC/123/2021-22 दिनांक: 11.02.2022, issued by Deputy/Assistant Commissioner, CGST, Division-VII, Ahmedabad-North & Order-in-Original No. 07/ADC/GB/2022-23 dated 06.05.2022 issued by Joint/Additional Commissioner, Ahmedabad North, Ahmedabad

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant
M/s Abhishek Associates,
8, Parulnagar Shopping Centre,
Bhuyangdev Cross Road, Sola Road,
Ghatlodiya, Ahmedabad-380061
2. Respondent
 - (i) The Deputy/ Assistant Commissioner, CGST, Division-VII, Ahmedabad North, 4th Floor, Shajanand Arcade, Nr. Helmet Circle, Memnagar, Ahmedabad-380052
 - (ii) The Joint/Additional Commissioner, CGST, Ahmedabad North, Custom House, 1st Floor, Navrangpura, Ahmedabad-380009

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।

(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 मामलों 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 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 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 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 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.

(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. 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 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 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.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील 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 .

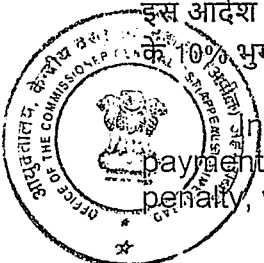
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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

Two Appeals, as per details given below, have been filed by M/s. Abhishek Associates, 8, Parulnagar Shopping Centre, Bhuyangdev Cross Road, Sola Road, Ghatlodiya, Ahmedabad-380061 against the O-I-Os mentioned below passed by the respective adjudicating authorities:

Sr.No.	Appeal No.	OIO No and Date	Period Involved	Amount	Referred to as
01	GAPPL/COM/STP /1284/2022	CGST/A'bad North/Div-VII/DC/123/2021-22 dated 11.02.2022 SCN No.09/2021-22 issued vide F.No. CTA/04-626/Cir-VII/AP-43/2020-2021 dated 13.04.2021	F.Y.2015-16 (Oct to March) to F.Y. 2017-18 (upto June, 2017)	Rs.19,46,380/- Tax Rs.19,46,380/- Penalty u/s 78 Rs.2,000/- Late Fees	Impugned Order -1 passed Deputy Commissioner, Central GST & Central Excise, Ahmedabad North, Division-VII (in short ' <i>the adjudicating authority-2</i> ').
02	GAPPL/COM/STP /1810/2022	07/ADC/GB/2022-23 dated 06.05.2022 SCN No.STC/15-93/OA/2020 dated 29.09.2020	F.Y. 2014-15 to F.Y. 2016-17	Rs. 37,12,791/- Tax Rs.3712791/- Penalty u/s78 Rs.10,000/- Penalty u/s77	Impugned Order -2 passed Additional Commissioner, Central GST & Central Excise, Ahmedabad North (in short ' <i>the adjudicating authority-1</i> ').

2. The facts of the case of the **Appeal listed at Sr.no.1** above, in brief, are that on the basis of the Final Audit Report No. CE/ST-1118/2021 dated 13.04.2021, issued by the Central Tax, Audit Commissionerate, Ahmedabad, following two revenue paras were raised:-

- a) **Revenue Para-1:** On reconciliation of Balance Sheet, Trial Balance and ST-3 Returns, short payment of service tax amounting to **Rs.19,46,380/-** was noticed on the excess income reflected in the financial records for F.Y. 2015-16 (Oct-March) to F.Y. 2017-18 (upto-June2017). Scrutiny of ledgers revealed that the appellant had provided works contract service (periodic maintenance, repairs and operation of electrical installation) to various Airports under Air Port Authority of India (Ahmedabad, Amritsar, Aurangabad, Bagdogra, Bhopal, Gondia, Jamshedpur, Khajuraho, Kolkata, Mangalore, Port Blair etc) and repair and maintenance works for M/s. M.V. Omni Projects (India) Ltd, ESI Mumbai and ESI Ahmedabad etc. On scrutiny of individual party ledgers, it had been observed that the appellant had not paid service tax towards works contract provided to M/s. MI-Bhopal, M.V.Omni Projects (India) Ltd, ESI Mumbai, ESI Ahmedabad. It appeared that the said activities carried out by the appellant falls within the scope of the definition of 'service' defined under Section 65B (44) of the Act and were not covered under the



negative list, hence appeared to be taxable. They also did not appear to be covered under Notification.No.25/2012-ST dated 20.06.2012.

- b) **Revenue Para-2:** Scrutiny of records revealed that the appellant had late filed the ST-3 Returns for the F.Y. 2015-16 (Oct to March) & F.Y. 2016-17 (April-September). They, therefore were required to pay late fees of **Rs.2000/-** in terms of Section 70 of the F.A., 1994 read with Rule 7C of the Service Tax Rules, 1994.

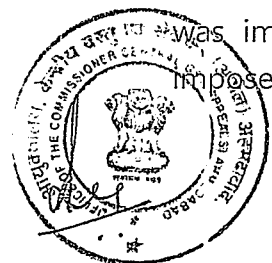
2.1 A Show Cause Notice (SCN) No. 09/2021-22 issued from F. No: CTA/04-626/Cir-VII/AP-43/2020-2021 dated 13.04.2021 was, therefore, issued to the appellant proposing recovery of service tax demand of **Rs.19,46,380/-** not paid on the differential value of income received during the F.Y. 2015-16 (Oct-March) to F.Y. 2017-18 (upto-June2017), along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of late fees under Sections 70 and penalty under Section 78(1) of the Finance Act, 1994 were also proposed.

2.2 The said SCN was adjudicated vide the **Impugned Order-1**, wherein the service tax demand of Rs.19,46,380/- was confirmed alongwith interest. Late fees of Rs.2000/- was imposed under Section 70 and equivalent penalty of Rs.19,46,380/- was also imposed under Section 78.

3. The facts of the case of the **Appeal listed at Sr.no.2** above, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15 to F.Y. 2016-17, it was noticed that the 'Sales/Gross Receipts' from services declared in ITR of the appellant were not tallying with the 'Gross Value of Service' declared in their ST-3 Returns. The appellant had declared less taxable value in their ST-3 Return for F.Y. 2014-15 to F.Y. 2016-17, as compared to the service related taxable value declared in their Income Tax Return (ITR) / Form 26AS filed under the Income Tax Act. Letters were subsequently issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for the F.Y. 2014-15 to F.Y. 2016-17. However, neither any documents nor any reply was submitted by them for non-payment of service tax on such receipts.

3.1 A Show Cause Notice (SCN) No.STC/15-93/OA/2020 dated 29.09.2020 was therefore issued to the appellant proposing recovery of service tax demand of **Rs.55,16,187/-** not paid on the differential value of income received during the F.Y. 2014-15 to F.Y. 2016-17, along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalty under Sections 77 and penalty under Section 78 of the Finance Act, 1994 were also proposed.

3.2 The said SCN was adjudicated vide the **Impugned Order -2**, wherein the service tax demand of Rs.37,12,791/- was confirmed alongwith interest. Service tax amount of Rs.18,03,396/- pertaining to period October,2015 to March, 2017 was dropped as the demand for said period was already decided vide OIO No. CGST/A'bad North/Div-VII/ST/DC/123/2021-22 dated 11.02.2022 (**Impugned Order -1**). Penalty of Rs.10,000/- was imposed under Section 77 and equivalent penalty of Rs.37,12,791/- was also imposed under Section 78.



4. Being aggrieved by the Impugned Orders, passed by the adjudicating authorities, as above, the appellant has preferred the present appeals contesting the demands, primarily on the common grounds, as the issue involved in both the appeals are identical:-

- The exemption in respect of works contract income from works contract service rendered to various Airports under AAI (like Bhopal, Ahmedabad, Amritsar, Aurangabad, Bagdogra, Bhopal, Gondia, Jamshedpur, Khajuraho, Kolkata, Mangalore, Port Blair Airport etc) has been claimed under Sr.No.14 of Notification No.12/2012-ST and as the agreement has been entered prior to 01.03.2015, and renewed every year as rate contract, exemption under Sr.No.14A of Notification No.09/2016-ST dated 01.03.2016, is also admissible. They relied on decision reported at 2021(44) GSTL 95 (Tri-Bang), CESTAT Bangalore in the case of GMR Projects Pvt. Ltd.
- Regarding the sub-contract receipt from M/s. M.V. Omni India Project Ltd., the service was provided to the Principal and is exempt in terms of Sr.No.29 (h) of Notification No.25/2012-ST dated 20.6.2012.
- The works contract service provided to ESI Mumbai Hospital and ESI Ahmedabad Hospital was to a clinical establishment, hence, covered under exemption provided under Sr.No.12 (c) of Notification No.25/2012-ST. As the contract has been entered into prior to 01.03.2015, exemption under Sr.No.14A of Notification No.09/2016-ST dated 01.03.2016, is also admissible. They placed reliance on G.P.Ceramics Pvt. Ltd-2009(2) SC 90.
- In terms of Rule 2A(A) of the Service Tax (Determination of Value) Rules, 2006, for the works contract entered in 'original work' under they are eligible for abatement and are required to pay only on 40% of the total amount charged.
- Demand based on IT return data is not sustainable as the factual details regarding the exempted services provided were not taken into account. They relied on the decisions reported at 2010(20) STR 789 (Tri-Mum), 2013 (31) STR 673 (Tri-Mum) 2010(19) STR 242 (Tri-Ahm).
- They claim that another SCN dated 13.04.2021, covering same period has been issued to them by A.C., CGST Audit, Circle -VII, wherein the service tax demand is of Rs.19,46,380/-. They, therefore, requested to reduce the present demand to this amount in the interest of justice. They also claimed that the demand confirmed vide Impugned Order No.-1 is also time barred as the demand of Rs.37,88,242/- covering same period was already decided vide OIO No CGST/A'bad North/Div-VII/ST/DC/40/ 2021-22 dated 24.08.2021.
- Demand is time barred as suppression cannot be invoked because IT return and ST-3 returns were filed on time. Moreover they were under the bonafide belief that the activities are exempted. They relied on Steel Cast Ltd-2011 (21) STR 500

(Guj).



- As the issue involves interpretation of statutory provisions of statute or exemption notification. Unless malafide intention is proved suppression cannot be invoked and penalty is also not impossible. They placed reliance on Bharat Wagon-(146) ELT 118 (Tri-Kolkata), 2001(135) ELT 873 (Tri-Kolkata), 2001(129) ELT 458 (Tri-Del).
- Penalty under Section 77 is not imposable as there is no short payment. Penalty under Section 77 & 78 can be imposed only on suppression, fraud or willful mis-statement of facts which is not the case as the non-payment was under the bonafide belief that their services are exempted.

4.1 Further, on going through the appeal memorandum filed in respect of Appeal listed at Sr.No.1 above, it is noticed that the Impugned Order-1 was issued on 11.02.2022 and was received by the appellant on 11.02.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 04.05.2022 i.e. after a delay of 22 days of time period prescribed for filing appeal. The appellant have on 23.06.2022, filed a Miscellaneous Application seeking condonation of delay stating that their authorized signatory was out of station and thus there was a delay in filing the appeal. They however claimed that as per Hon'ble Apex Court's decision on the issue of limitation on account of COVID-19 pandemic, time period for filing the appeal shall start from 01.3.2022. Hence, there is delay of only 4 days. They requested to condone the delay as the delay was within the condonable period.

5. Personal hearing in both the appeals were held on 24.01.2023. Shri Vipul Khandhar, Chartered Accountant, and Shri Sanjay Dubey, (Proprietor), appeared for the hearing. Shri Vipul Khandhar re-iterated the submissions made in the appeal memorandum. and the submissions made in the Miscellaneous Application seeking condonation of delay.

6. Before taking up the issue on merits, I will first decide the Miscellaneous Application filed seeking condonation of delay. The appellant have claimed that there was delay in filing appeal due to prevailing pandemic situation of COVID-19 and have relied on the Hon'ble Apex Court's decision passed vide Order dated 10.01.2022. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Act, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months.

6.1 Further, Hon'ble Supreme Court, keeping in view the difficulties faced by litigants due to restrictions on movement and in an attempt to reduce the transmission of the deadly virus, extended the limitation period under the general law of limitation or under any special laws (both Central and/or State) on the filing of all appeals, suits, petitions, applications and all other quasi proceedings vide its Order dated January 10, 2022, Hon'ble Court held that the period from March 15, 2020 till February 28, 2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings. Accordingly, the due



date for filing the appeal was 30th April, 2022. But, in terms of the proviso appended to sub-section (3A) of Section 85 of the Act and considering the cause of delay as genuine, I condone the delay of 3 days and take up the appeal for decision on merits.

7. I have carefully gone through the facts and circumstances of the case, the **Impugned Order-1 & 2**, passed by the respective adjudicating authorities, submissions made in the appeal memorandum as well as the submissions made at the time of personal hearing. The issues to be decided under the present appeals are:-

- a) Whether the activities carried out by the appellant should be considered taxable under 'Original Work' or under 'Maintenance & Repair service'?
- b) Whether the appellant are eligible for exemption claimed under Notification No.25/2012-ST dated 20.06.2012 and Notification No.09/2016-ST dated 01.03.2016 ?

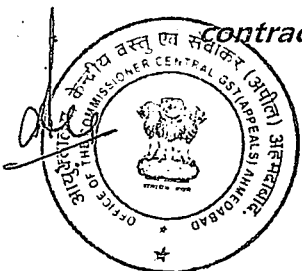
The period involved in the dispute is F.Y. 2014-15 to F.Y. 2017-18 (upto June, 2017).

7.1 It is on records that the appellant were registered under 'Maintenance & Repair Service', 'Works Contract', 'Erection, Commissioning & Installation service' and 'Manpower Recruitment /Supply Agency Service'. The adjudicating authorities have held that the services provided by the appellant in the nature of periodic maintenance, repairs and operation of electrical installation to various airports under Air Port Authority of India and repair and maintenance works for M/s. M.V. Omni India Projects Ltd, ESI Mumbai and ESI Ahmedabad during the disputed period which were classifiable under Works Contract Service. However, the exemption claimed by the appellant under Notification No.12/2012-ST dated 20.6.2012 was denied on the grounds that the appellant have not submitted the agreement/ contract/ sub-contract/ledgers/ invoices/financial records or any other documents in support of their claim seeking exemption. So, the appellant are not disputing the classification of service under Works Contract but are contesting the valuation in terms of Rule 2A of the Service Tax (Determination of Value) Rules, 2006 and claiming exemptions which were denied to them. They have claimed that the services rendered by them were in the nature of Original Work, hence, are liable to pay tax only on 40% of the abated value.

7.2 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.

7.3 To examine the service tax liability on the taxable income, I will refer Rule 2A of the Service Tax (Determination of Value) Rules, 2006, relevant text 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-

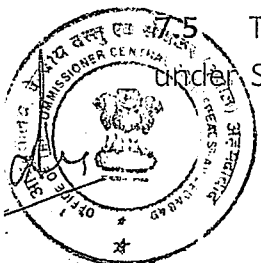
(i) all new constructions;

(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;

7.4 So, in terms of above Rule 2A (ii) 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 and where works contract entered is for repair and maintenance, the service tax shall be payable on 70% of the total amount charged for the works contract. The appellant have provided copy of letters granting contracts by Air Port Authority of India for periodical maintenance, Repairs & Operation of Electrical Installation at various Airports. They have also produced sample invoices raised to Air Port Authority of India by the appellant. On examining these documents, I find that the activities carried are not covered within the scope of 'original works' and, hence, the valuation shall be done under Rule 2(A)(ii)(B) of Service Tax (Determination of Value) Rules, 2006, and the appellant are required to discharge service tax liability on 70% of the abated value.

The appellant, on the services rendered by them, have claimed the exemption under Sr.No.12 (c) of Notification No.12/2012-ST and under Sr.No.14A of Notification



No.09/2016-ST dated 01.03.2016, on the grounds that the contracts were entered prior to 01.03.2015. Relevant text of the Notification is re-produced below:-

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

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;*

[Notification No. 9/2016-S.T., dated 1-3-2016]

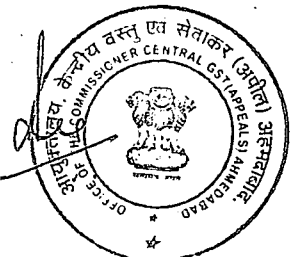
(vii) *after entry 14, with effect from the 1st March, 2016, the following entry shall be inserted, namely -*

"14A: Services by way of construction, erection, commissioning, or installation of original works pertaining to an airport or port provided under a contract which had been entered into prior to 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date :

provided that Ministry of Civil Aviation or the Ministry of Shipping in the Government of India, as the case may be, certifies that the contract had been entered into before the 1st March, 2015 :

provided further that nothing contained in this entry shall apply on or after the 1st April, 2020;"

7.6 Thus, on plain reading of above notifications, it is obvious that only 'original work' pertaining to an airport is granted exemption. But the Maintenance, Repairs & Operation of Electrical Installation at various Airports carried out by the appellant, though pertaining to Airport, does not qualify to be classified as original work. Also, Sr.No.14A of the Notification No.09/2016-ST dated 01.03.2016, clearly states that said exemption is available for the installation of original works pertaining to an airport under a contract which had been entered into prior to 1st March, 2015 and where the Ministry of Civil Aviation, of Government of India, certifies that the contract had been entered into before the 1st March, 2015. I find that the appellant could not produce any certificate issued by the Civil Aviation Ministry certifying that the contract entered was prior to 1st March, 2015. Even otherwise Sr.No.14 allows exemption only to construction, erection, commission or installation of original work. Therefore, the benefit claimed under said notifications cannot be granted to the appellant.



8. Further, the appellant have also submitted a copy of Work Order entered with M/s. M.V.Omni Projects (India) Ltd. wherein they were entrusted the work of clearing the canal land width, striping the canal construction, excavation of canal, earthwork in embankment using selected soil, compaction of earthwork in embarking in uniform layer etc. All these activities are to be performed in respect of the Constructing 19 Minors of Block No.42 of Jhinjhuwada Branch Canal and their O&M for five years, which is project undertaken by M/s. Sardar Sarovar Narmada Nigam Ltd. On examining these documents, 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 Jhinjhuwada Branch Canal and O&M for 5 years. This work was subsequently sub-contracted to the appellant by M/s. M.V.Omni Projects India Ltd, wherein they were entrusted the work of clearing the canal land width, striping the canal construction, excavation of canal, earthwork in embankment using selected soil, compaction of earthwork in embarking in uniform layer etc. I find that the works contract service rendered by M/s. M.V.Omni to M/s. Sardar Sarovar Narmada Nigam Ltd is exempted vide Entry No.12(d), as the same was rendered to a Company which is wholly owned organization of the Gujarat Government. Therefore, the services rendered by the appellant in capacity of a sub-contractor to another contractor (M/s. M.V.Omni) shall also be exempted as the works contract service provided by M/s. M.V.Omni are exempted as it was provided to a governmental authority, as defined under clause (s) of the notification.

8.1 The relevant Entry No. 12(d) and under Entry No. 29(h) of Notification No.25/2012-ST dated 20.6.2012, as amended, are reproduced below:-

Notification No. 25/2012-ST 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 -

(d) canal, dam or other irrigation works;

Entry No.28(h) states that:

29. Services by the following persons in respective capacities -

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

9. In respect of services rendered to ESI Mumbai Hospital and ESI Ahmedabad Hospital, it has been claimed that the same was to a clinical establishment, hence, covered under exemption provided under Sr.No.12 (c) of Notification No.25/2012-ST. The appellant have produced copy of sample invoices dated 18.05.2015 issued to ESIC (General Hospital), Ahmedabad wherein the charges collected were towards maintenance of office space provided by ESIC. I find that in terms of Sl. No.12(c), maintenance of clinical establishment are covered under Exemption Notification No.25/2012-ST, however, this exemption was withdrawn with effect from 1st April, 2015 vide Notification No.007/2015-ST dated 01.03.2015, as clause (a), (c) and (f) of Entry 12 were omitted.



Subsequently, vide introduction of new Sr.No.12A by Notification No.09/2016-ST dated 1st March, 2016, this exemption was re-introduced with effect from 01.03.2016, provided a contract had been entered into prior to 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date. Thus, in terms of above changes, I find that for the F.Y. 2014-15, the exemption is available as no such restriction was there. However, for the period from 1st April, 2015 to 1st March, 2016, no such exemption was available hence the appellant is liable to pay tax. Also for the subsequent period from 1st April, 2016 onwards, the exemption cannot be granted as the appellant have not produced the contract to establish that the same was entered prior to 01.03.2015. Relevant Text of the Notification is reproduced below.

Notification No.25/2012-ST

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 –

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

[Notification No. 6/2015-S.T., dated 1-3-2015]

effective from 1st of April, 2015.

(ii) in entry 12, items (a), (c) and (f) shall be omitted;

Notification No.09/2016-ST

12A. 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 –

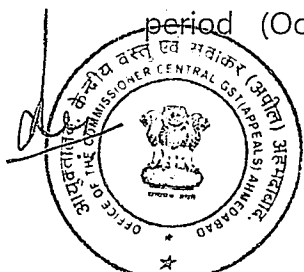
(a) XXX

(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

(d) XXX

under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date: provided that nothing contained in this entry shall apply on or after the 1st April, 2020;”;

10. Another contention raised by the appellant is that the demand covering period (April, 2014 to March, 2017) invoking extended period confirmed vide **Impugned Order-2** is not sustainable as already an SCN dated 13.04.2021, covering same period involving demand of Rs.19,46,380/- has been decided. I find that the SCN dated 13.04.2021 was decided vide Impugned Order No-1 and covered F.Y.2015-16 (Oct,15 to March,16) to F.Y. 2017-18 (upto June). But the adjudicating authority of Impugned Order-2 has already addressed this issue and dropped the service tax demand of Rs.18,03,396/- covering period (October, 2015 to March,2017) considering the fact that the demand period is



already covered in the SCN No.CTA/04-626/Cir-VII/AP-43/2020-21 dated 13.04.2021 and therefore, confirmed the demand of Rs.37,12,791/- for the F.Y.2014-15 & F.Y. 2015-16 (April,15 to September,15) only. Table is prepared to explain the same.

Table-A

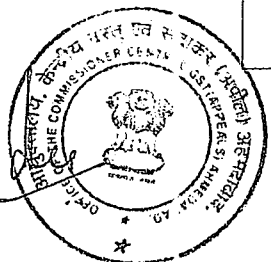
Period	Original Demand	Confirmed Portion	Dropped Portion	Reasons for dropping
2014-15	2786335	2786335	0	-
2015-16	1380096	586536	793560	OIO No. CGST/A'bad North/Div-VII/DC/123/2021-22 dated 11.02.2022
2016-17	1349756	339920	1009836	
TOTAL	5516187	3712791	1803396	

I also do not agree with the contention of the appellant that the entire demand of Impugned Order No.-2 is time barred because the demand confirmed vide Impugned Order No.1 was in respect of the SCN issued on 29.09.2020, which was issued prior to SCN dated 13.04.2021. Thus, demand covering period April, 2015 to September, 2015, in the Impugned Order-2, is sustainable.

10.1 Further, in respect of the demand confirmed vide **Impugned Order No.-1**, they have claimed that it is also time barred as the demand of Rs.37,88,242/- covering same period was already decided vide OIO No CGST/A'bad North/Div-VII/ST/DC/40/ 2021-22 dated 24.08.2021. In the OIO dated 24.08.2021, the period covered is from March, 2016 to June, 2017 and was for non-payment of tax on claiming inadmissible exemption for the services rendered to Air Port Authority. Whereas, the Impugned Order No.-1 covered F.Y.2015-16 (October,15 to March,16) to F.Y. 2017-18 (upto June) and involved issue of short payment of tax for services rendered to Air Port Authority, M.V.Omni & ESI Mumbai & Ahmedabad, noticed during audit. I find that period covered in the Impugned Order-1 is overlapping with the period of OIO dated 24.08.2021. As the demand notice adjudicated vide OIO dated 24.08.2021 for (March, 2016 to June, 2017) was issued on 22.10.2018 i.e. prior to notice dated 13.04.2021, the demand of March, 2016 to June, 2017, covered in Impugned Order-1 is legally not sustainable. Further, the remaining period of demand (2015-16 i.e. October-2015 to March- 2016) of Impugned Order-1 is also time barred as suppression cannot be invoked in subsequent SCN, when already a SCN dated 29.09.2020 covering same period was issued earlier.

Table-B

SCN	Period	OIO
SCN dated 22.10.2018	March,2016 to June,2017	CGST/A'bad North/Div-VII/STDC/40/20-21 dated 24.08.2021
SCN dated 29.09.2020	2014-15 2015-16 2016-17	07/ADC/GB/2022-23 dated 06.05.2022 (Impugned Order-2)
SCN dated 13.04.2021	2015-16 (Oct-March 2016-17 2017-18 (upto June,2017)	CGST/A'bad North/Div-VII/DC/123/2021-22 dated 11.02.2022 (Impugned Order-1)



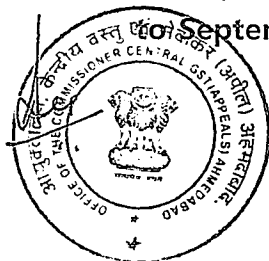
11. In the ST-3 returns, the assessee is required to disclose the total value of service which includes the exemption/abated value of services and also the exempted/abated value of services before computing the service tax. The demand was raised based on the third party data provided by Income Tax department. The appellant was suppressing the taxable income in the ST-3 Returns filed which came to the notice of the department only through data provided by the Income tax department. As the onus to disclose full and correct information about the value of taxable services lies with the service provider, hence they are duty bound to disclose all and correct information in the ST-3 returns. Non disclosure of full and correct information in returns would amount to suppression of facts. Non-payment of tax, by classifying the service under wrong head and thereby claiming ineligible exemption, clearly establishes the conscious and deliberate intention to evade the payment of service tax. Thus, the demand for period **April, 2015 to September, 2015** confirmed in the Impugned Order-2 is sustainable as all the ingredients to invoke the extended period of limitation provided under proviso to Section 73(1) of the F.A, 1994 is fulfilled.

12. I find that the penalty imposed on the appellant under Section 78 of the Finance Act, 1994, is also justifiable as it provides for penalty for suppressing the value of taxable services. The crucial words in Section 78(1) of the Finance Act, 1994, are '*by reason of fraud or collusion*' or '*willful misstatement*' or '*suppression of facts*' should be read in conjunction with '*the intent to evade payment of service tax*'. Hon'ble Supreme Court in case of *Union of India v/s Dharamendra Textile Processors* reported in [2008 (231) E.L.T. 3 (S.C.)], considered such provision and came to the conclusion that the section provides for a mandatory penalty and leaves no scope of discretion for imposing lesser penalty. The suppression of taxable value, non-payment and short payment of tax, clearly show that they were aware of their tax liability but chose not to discharge it correctly instead tried to mislead the department by wrongly classifying the repair and maintenance service under 'original works' to avail inadmissible exemption, which undoubtedly bring out the willful mis-statement and fraud with an intent to evade payment of service tax. If any of the ingredients of proviso to Section 73(1) of the Finance Act, 1994 are established the person liable to pay duty would also be liable to pay a penalty equal to the tax so determined.

13. On the imposition of penalty under Section 77, I find that the appellant did not furnish the information called by an officer nor produced documents called for by a Central Excise Officer in accordance with the provisions of this Chapter or rules made thereunder, thus they are liable to a penalty. I, therefore, do not interfere with the findings of the adjudicating authority and uphold the penalty of Rs.10,000/-.

14. When the demand sustains, there is no escape from interest. Hence, the same is, therefore, also recoverable under Section 75 of the F.A., 1994. Appellant, by failing to pay service tax on the taxable service, are liable to pay the tax alongwith applicable rate of interest.

15. In view of the above discussions and findings, I, therefore, remand the matter to the adjudicating authority to re-determine the demand pertaining to period **April, 2015 to September, 2015**, covered in the Impugned Order-2, after examining the availability



of exemption as discussion in Para 8 to 8.1 above. The appellant is, therefore, directed to submit all relevant documents / details before the adjudicating authority, including those submitted in the appeal proceedings, in support of their contentions. The adjudicating authority shall decide the case for this limited period and issue on merits and accordingly, pass a reasoned order, following the principles of natural justice.

16. Accordingly, the Impugned Order-1 is set-aside and to that extent, I allow the appeal filed by the appellant. In respect of the Impugned Order-2, I uphold the demand covering period April, 2015 to September, 2015 and remand the matter to the adjudicating authority for decision, in light of the discussion at Para-8 & 9 above and the demand for remaining period is set-aside.

17. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

Aruna
(अखिलेश कुमार)
65 February 2023..

आयुक्त (अपील्स)

Date: 06.02.2023

Attested

Rekha Nair

(Rekha A. Nair)

Superintendent (Appeals)

CGST, Ahmedabad



By RPAD/SPEED POST

To,

M/s. Abhishek Associates,

8, Parulnagar Shopping Centre,

Bhuyangdev Cross Road, Sola Road, Ghatlodiya,

Ahmedabad-3800061

Appellant

The Deputy Commissioner

CGST, Division-VII, Ahmedabad North,

Ahmedabad

Respondent-1

The Additional Commissioner,

Central GST & Central Excise,

Ahmedabad North,

Respondent-2

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.

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