



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:20230264SW0000015194

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1791/2022-APPEAL

18330 - 8332

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-149/2022-23**
दिनांक Date : **08-02-2023** जारी करने की तारीख Date of Issue 15.02.2023

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

ग Arising out of Order-in-Original No. **CGST-06/D-VI/O&A/08/Chetan/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 Chetan Mehta,
Proprietor of M/s. Devashish Construction,
B-16, Shivam-2 Bungalows,
Gala Gymkhana Road, Near Sharnam County,
Bopal, Ahmedabad-380058

2. Respondent

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

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

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

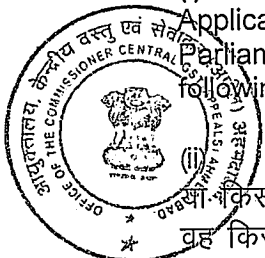
भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में 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 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 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.

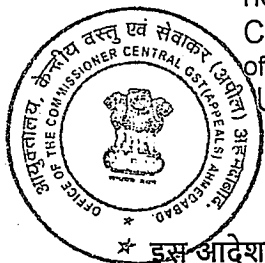
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

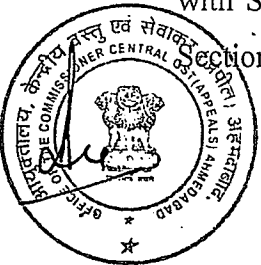


ORDER-IN-APPEAL

The present appeal has been filed by M/s. Chetan Mehta, Proprietor of M/s. Devashish Construction, B-16, Shivam-2 Bungalows, Gala Gymkhana Road, Near Sharanam County, Bopal, Ahmedabad - 380058 (hereinafter referred to as "the appellant") against Order-in-Original No. CGST-06/D-VI/O&A/08/Chetan/AM/2021-22 dated 28.04.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division VI, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant is holding PAN No. AQOPM9167E. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2014-15, it was noticed that the appellant had earned an income of Rs. 84,24,741/- during the FY 2014-15, which was reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" or "Total amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)" provided by the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but has neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant was called upon to submit copies of Balance Sheet, Profit & Loss Account, Income Tax Return, Form 26AS, for the said period. However, the appellant had not responded to the letters issued by the department.

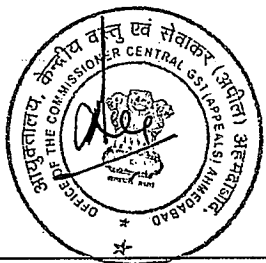
2.1 Subsequently, the appellant was issued a Show Cause Notice No. CGST-06/04-571/O&A/Chetan/2020-21 dated 28.09.2020 demanding Service Tax amounting to Rs. 10,41,297/- for the period FY 2014-15, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; recovery of late fees under Rule 7C of the Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994; and imposition of penalties under Section 76, Section 77(1) & Section 78 of the Finance Act, 1994.



2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 10,41,297/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2014-15. Further (i) Penalty of Rs. 10,41,297/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77 of the Finance Act, 1994 for failure to taking Service Tax Registration; and (iii) Penalty of Rs. 40,000/- was imposed on the appellant under Section 70(1) of the Finance Act, 1994 for not furnishing service tax returns.

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

- The appellant, Chetan Mehta, Proprietor of M/s. Devashish Construction, is engaged in providing Construction of Canal, and Irrigation Works service through Petty Contractors, and various small Construction Contractors.
- During the FY 2014-15, the appellant had been sub-contracted Construction works, pertaining to Canal to be constructed for Sardar Sarovar Nigam Limited (SSNNL) from M/s. M.V. Omni Projects (India) Ltd. and M/s. NCC Limited (hereinafter referred to as "the main contractors"), where the main contractors had been awarded the work by M/s. Sardar Sarovar Nigam Ltd.. The main contractors in turn hired the appellant for carrying out construction of certain blocks out of the Canal's construction work entrusted to them by SSNNL.
- It is not disputed that the construction services provided by the main contractor to SSNNL was exempted from payment of Service Tax vide clause (d) of Sr. No. 12 of the Notification No. 25/2012-ST dated 20.06.2012. It is not disputed that the construction services provided by a sub-contractor to a principal contractor is exempt from levy of Service Tax vide clause (h) of Sr. No. 29 of the Notification No. 25/2012-ST dated 20.06.2012, where the construction service provided by the principal contractor is exempt. Therefore, the construction service provided by the



appellant to the main contractors was exempted from levy of Service Tax as per Sr. No. 12(d) read with Sr. No. 29(h) of the Notification No. 25/2012-ST dated 20.06.2012. The appellant had provided construction services amounting to Rs. 84,24,741/- (Rs. 60,97,990/- to M/s. M.V. Omni Project (India) Ltd. and Rs. 23,26,751/- to M/s. NCC Ltd.) the main contractors which was accordingly exempt from payment of Service Tax. The appellant had not provided any service other than above-mentioned services to the main contractors. The appellant was hence neither liable to pay Service Tax, nor liable for obtaining Service Tax Registration. The appellant, accordingly, did not obtain the Service Tax Registration and not paid Service Tax on the exempted services provided by them.

- The appellant had also sub-contracted the construction work to various Petty contractors, who had provided the Works Contracts Services to the appellant, which the appellant in turn had billed to the main contractors. Since the services provided by the appellant to main contractors are exempt from Service Tax, the appellant has not taken benefit of the Cenvat credit charged by such Petty contractors.
- The appellant received a letter dated 31.07.2020 from the Superintendent, Central Excise & CGST Range-1, Division-VI, Ahmedabad North directing the appellant to explain the reason for non-payment of Service Tax and in response to the said letter the appellant vide letter dated 05.09.2020 received by the CGST Division-I, Ahmedabad North on 08.09.2020, submitted copies of required documents along with Work orders. However, the adjudicating authority had out right ignored the submission made by the appellant and issued show cause notice on 28.09.2020 alleging that the appellant failed to submit the required details and documents.
- Without prejudice to above, the appellant submitted that the show cause notice issued with assumptions, whims and fancies, based on information in Form 26AS only, which is unjust and illegal. The entire proceedings has been initiated and undertaken without considering the documents and information submitted by the appellant.

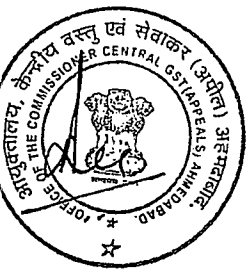


- Without prejudice to above, the appellant submitted that the impugned order is not a speaking order to the extent, it fails to provide the proper Service Tax category and classification under which the services are allegedly classified, as Service Tax can not be made applicable without a proper classification. The adjudicating authority had failed to justify the classification adopted for the purpose of levying Service Tax and the only basis behind the assumption taken by the adjudicating authority is the Profit and Loss Account submitted by the appellant before the issuance of the SCN.
- After referring the Profit and Loss Account, the adjudicating authority had formed a judgement that the appellant was not providing Works Contract Services but providing Labour Services on the basis of the fact that there was not element of purchase of material in the Profit and Loss Account.
- Without prejudice to the above, the appellant submitted that the appellant is a sub-contractor of the main contractors and undertakes Construction of Canal and Irrigation Work Service through Petty Contractors and various small Construction Contractors. The business model of the appellant is to hire small Petty Contractors and further sub-contract small activities. The Petty Contractors charged and recovered the consideration from the appellant on the basis of and on completion of the activities assigned to it, which inclusive of the material and labour. However, since the cost incurred by the appellant for sub-contracted activities, is significantly attributable to Labour charges and minimal amount attributable to goods / materials, the Accountant of the appellant had recorded all these expenses as Labour charges as per the Generally Accepted Accounting Principles (hereinafter referred to as "GAAPs"), which is purely an accounting matter. The Accounting is governed by GAAPs, which are completely different from Finance Act, 1994. Neither the Finance Act, 1994 provides any accounting principle, nor the accounting treatment as per the GAAPs can result in an outright change in the classification of service provided which has the effect of taking away an exemption provided by the Government for building the infrastructure at reasonable and competitive cost. Therefore, the accounting of the services taken by the appellant from Petty Contractors as Labour charges, in the premise that a significant portion of the activity consist of Labour charges, can not result in changing or altering nature of



the Works Contract activities performed by the appellant as Labour Services. Therefore, the adjudicating authority is grossly erred while holding that the services provided by the appellant are Labour services.

- Without prejudice to the above, for sake of argument, even if it is accepted that the appellant is a Labour contractor, the service provided by a Labour contractor squarely falls under the Reverse Charge Mechanism under Notification No. 30/2012-ST dated 20.06.2012, which shifts the burden to discharge the Service Tax on the recipient of services.
- Without prejudice to the above, the appellant place reliance on the Order-in-Original No. WS07/O&A/OIO-123/AC-RAG/2021-22 dated 03.03.2022 issued by the Assistant Commissioner, Central Excise & CGST, Division-VII, Ahmedabad South related to an identical matter, wherein the Assistant Commissioner had dropped the demand. The appellant submitted copy of the OIO dated 03.03.2022 along with appeal memorandum.
- Without prejudice to the above, the appellant submitted that SCN is time-barred, as there is no suppression of facts or fraud and hence, the adjudicating authority has travelled beyond the four corners of law while invoking the extended period. The information relied on by the adjudicating authority is already on public domain and was always accessible by the Service Tax department. The appellant was of opinion that the services provided by the appellant to main contractors were exempt and there was no requirement to obtain Service Tax Registration, or to make payment of Service Tax or to file Service Tax returns, and hence he was not required to submit the above information and documents with the Service Tax department, and by no stretch of imagination or interpretation of law, this can be treated as suppression of facts. Therefore the adjudicating authority has grossly erred in invoking extended period of limitation.
- Without prejudice to the above, the appellant submitted that it is a settled principle of law that the issues and matters arising out of interpretation of law, cannot be laid to have been done with intent of fraud, or wilful misrepresentation, or for



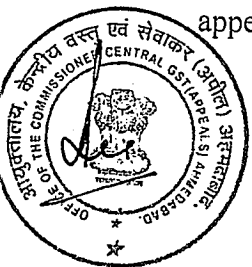
suppression of facts, or with the intent to evade payment of tax. Therefore, the extended period of limitation cannot be invocable.

- Without prejudice to the above, the appellant submitted that where the original demand itself is wrong in law and liable to be dropped, there arise no question of payment of interest.
- Without prejudice to the above, the appellant submitted that where the original demand itself is wrong in law and liable to be dropped, there arise no question of imposition of penalty and / or Late fee.
- On the basis of above grounds, the appellants requested that the impugned order confirming demand of service tax, interest thereon and imposing penalties be quashed and set aside.

4. Personal hearing in the matter was held on 17.01.2023. Shri Vikas Agarwal, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand against the appellant along with interest and penalty, in the facts and circumstance of the case is legal and proper or otherwise. The demand pertains to the period FY 2014-15.

6. I find that in the SCN in question, the demand has been raised for the period FY 2014-15 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services under Sales / Gross Receipts from Services" provided by the Income Tax Department, no other cogent reason or justification is forthcoming from the SCN for raising the demand against the appellant. It is also not specified as to under which category of service the non-levy of service tax is alleged against the appellant. Merely because the appellant had reported receipts from services, the same cannot form the basis for arriving at



the conclusion that the respondent was liable to pay service tax, which was not paid by them. In this regard, I find that CBIC had, vide Instruction dated 26.10.2021, directed that:

"It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee."

6.1 In the present case, I find that letters were issued to the appellant seeking details and documents, which were allegedly not submitted by them. However, without any further inquiry or investigation, the SCN has been issued only on the basis of details received from the Income Tax department, without even specifying the category of service in respect of which service tax is sought to be levied and collected. This, in my considered view, is not a proper ground for raising of demand of service tax.

7. I also find that the appellant have also contended that the demand is barred by limitation. In this regard, I find that the due date for filing the ST-3 Returns for April, 2014 to September, 2014 was 14th November, 2014 (as extended vide Order No. 02/2014-ST dated 24.10.2014). 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. Therefore, the demand on this count is also not sustainable for the

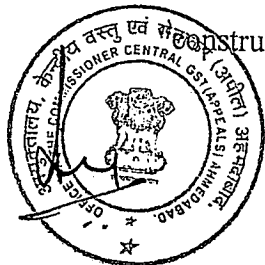


period from April, 2014 to September, 2014 as, the same is barred by limitation. In this regard, I also find that the adjudicating authority has not taken into consideration the issue of limitation and confirmed the demand in toto.

7.1 For the remaining period from October, 2014 to March, 2015, the due date of filing ST-3 Return was 25th 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 20th March, 2020 to 29th September, 2020, the same shall stand extended to 31st March, 2021. In the instant case, the due date for issuing SCN was 24th April, 2020, but the same was issued on 28th 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 period of limitation.

8. It is also 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, in the impugned order, had held that the appellant had received an income of Rs. 84,24,741/- from contracts and incurred expenses of Rs. 79,45,404/- 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 contractors.

8.1 In this regard, I find that the M/s. Sardar Sarovar Narmada Nigam Ltd. has issued (i) a Work Order dated 04.02.2012 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



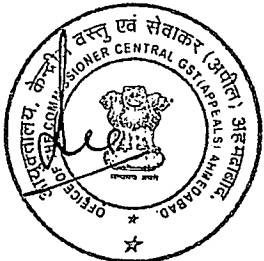
years” and (ii) a Work Order dated 12.03.2012 to M/s. M.V. Omni Projects (India) Ltd. for the work of “constructing 19 minors of Block No.51 of Jhinjhuwada Branch Canal and O&M for 5 years”. The appellant also submitted a Work Order dated 15.04.2014 issued by M/s. M.V. Omni Projects India Ltd. to the appellant for the work of “constructing 19 minors of Block No.42 of Jhinjhuwada Branch Canal and O&M for 5 years” for Rs. 60,97,990/- on sub-contract basis.

8.1.1 It is observed that in the Work Order dated 15.04.2014 issued by M/s. M.V. Omni Projects (India) Ltd., the scope of work is mentioned as under:

- (a) Clearing Julifora (profails) jungle including up-rooting & removing of juliflora stumps along the pipe lines.
- (b) Barricading to pipelines trench from side to ensure safety and cautioning to the public & traffic including required caution board and taps etc. as per the site in-charge.
- (c) Barricading and diversion of traffic with 1000 mm thick UCR masonry wall 5 mtr long and 1.3 mtr height over lean concrete 3” thick including pointing and white wash outside all indicated.

8.2 I also find that a letter for Acceptance of Tender dated 26.02.2014 issued by the Executive Engineer, Project Construction Dn. No. 4, Rajkot to M/s. NCC Ltd. for the work of “Sauni Yojna: Link3, Package 2, Engineering, Procurement and Construction (EPC) Contract for Construction of Intermediate Pumping Station at Chainage 12.7 Km near Khatadi village and and supplying and laying of twin MS pipeline (Pumping) of 3000 mm dia...”. The appellant also submitted a Work Order dated 20.12.2014 issued by M/s. NCC Ltd. to the appellant for the work of “Site area levelling, jungle clearance, filling with soil and Earth work excavation for trail pits and formation of approach roads etc. for Sauni Yojana Project, Pkg-2” for Rs. 1,05,39,350/- on sub-contract basis.

8.2.1 It is also observed that the in the Work Order dated 20.12.2014 issued by M/s. NCC Ltd., the scope of work is mentioned as under:



- (1) Barricading and diversion of traffic with 1000 mm thick UCR masonry wall 6 mtr long and 1.3 mtr height over lean concrete 3" thick including pointing and white wash outside all indicated.
- (2) Breadking hard rock for approach roads 3000 mm dia.
- (3) Clearing Julifora (prosafis) jungle including up-rooting of 3000 mm dia
- (4) Construction of infiltration well with brickwall and RCC upto GL.
- (5) Construction of security room including all materials, labour, tools & tackle, etc.
- (6)
- (18) Shoring shuttering including material & labour.

8.3 On the basis of the aforesaid scope of works mentioned in work order for sub-contracting the work to the appellant, I find that the service provided by the appellant is related to clearing site for canal as well as constructing wall, formation of approach road, other construction activity, etc. and the work is required to be carried out with material required and thus, termed as work contract service for construction of canal.

8.4 On basis of the aforesaid work order and discussion made above, I find that the appellant have carried out work related to Canal and Irrigation for M/s. M.V. Omni Projects (India) Ltd. & M/s. NCC Ltd. on sub-contract basis, which was originally allotted to the M/s. M.V. Omni Projects (India) Ltd. & M/s. NCC Ltd. by the Government.

8.5 I also find that, in their Profit & Loss Account, the appellant have shown an income of Rs. 84,24,741/- as contract income out of which they have charged an amount of Rs. 79,45,404/- towards labour charges, for which, the appellant submitted 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, which appears to be acceptable.

8.6 In view of the above, discussion, I find that the appellant is eligible for benefit of exemption from Service Tax as per Sr. No. 12(d) of the Notification No. 25/2012-ST dated 20.06.2012, the relevant abstract of the same is as under:



"Notification No. 25/2012-Service Tax dated 20th June, 2012

G.S.R. 467(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

1...

2... ..

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];
**** omitted by Notification No. 6/2015-ST dated 01.03.2015 w.e.f. 01.04.2015

(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);

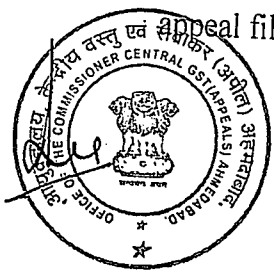
(c) [a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;] **** omitted by Notification No. 6/2015-ST dated 01.03.2015 w.e.f. 01.04.2015

(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)

9. In view of the above, I hold that the impugned order passed by the adjudicating authority confirming demand of Service Tax, on the income received by the appellant during the FY 2014-15, is not legal and proper and deserves to be set aside on various counts as enumerated above. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.



10. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

Akhil
(Akhilesh Kumar)
Commissioner (Appeals)
26 February, 2023.



Attested

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

By RPAD / SPEED POST

To,
M/s. Chetan Mehta,
Proprietor of M/s. Devashish Construction,
B-16, Shivam-2 Bungalows,
Gala Gymkhana Road,
Near Sharanam County, Bopal,
Ahmedabad - 380058

Appellant

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

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST, Division VI, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North

(for uploading the OIA)

5) Guard File

6) PA file

