



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- टेलीफैक्स 07926305136



DIN:20230264SW0000333C39

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1808/2022-APPEAL / ६५३१ - ३५
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-159/2022-23
 दिनांक Date : 09-02-2023 जारी करने की तारीख Date of Issue 20.02.2023
 आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST/WT07/RAJ/103/2022-23 दिनांक: 29.04.2022,
 issued by Deputy/Assistant Commissioner, CGST, Division-VII, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Ganeshbhai Amrabhai Makwana,
59, Sarthi Bungalows, Opp. Tata Workshop,
Chandkheda, Ahmedabad-382424

2. Respondent

The Deputy/ Assistant Commissioner, CGST, Division-VII, Ahmedabad
North , 4th Floor, Shahjanand Arcade, Memnagar, Ahmedabad - 380052

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 :

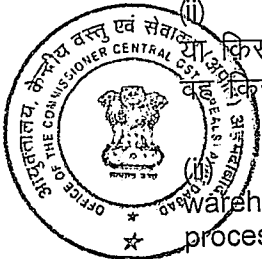
भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

(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 किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के 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.

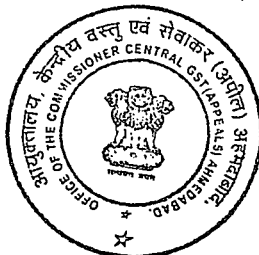
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 filed to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर 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."



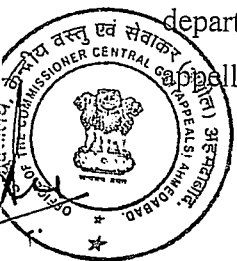
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Ganeshbhai Amrabhai Makwana, 59, Sarthi Bunglows, Opp. Tata Work Shop, Chandkheda, Ahmedabad – 382424 (hereinafter referred to as “the appellant”) against Order-in-Original No. CGST/WT07/RAJ/103/2022-23 dated 29.04.2022 (hereinafter referred to as “the impugned order”) passed by the Deputy Commissioner, Central GST, Division VII, 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. AKGPM8676G. 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. 10,23,158/- 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/AR-V/Div-VII/A'bad North/TPD UR/94/20-21 dated 27.09.2020 demanding Service Tax amounting to Rs. 1,26,462/- 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; and imposition of penalties under Section 77(1)(a), Section 77(1)(c), Section 77(2) & Section 78 of the Finance Act, 1994. The SCN also proposed recovery of un-quantified amount of Service Tax for the period FY 2015-16 to FY 2017-18 (up to Jun-17).

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. 3,87,072/- 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 to FY 2015-16. Further (i) Penalty of Rs. 3,87,072/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(a) & Section 77(1)(c) of the Finance Act, 1994 for not submitting documents to the department, when called for; and (iii) Penalty of Rs. 10,000/- was also imposed on the appellant under Section 77(2) of the Finance Act, 1994.



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

- The appellant is Proprietorship concern and in the business of sale of goods used in the constructions and service of labour work from the year starting from 01.04.2014 and invoices of sales for the said supply of goods and services were issued separately for the traded goods and service to the customers. They submitted all sale invoices of goods and services along with appeal memorandum. They submitted that sale of goods is not taxable in service tax law.
- Their service is not liable to tax as per the Notification No.33/2012-ST dated 20.06.2012 which provides an option to the service provider to avail of exemption from taxable services of aggregate value not exceeding the limit of Rs. 10 lacs.
- Further, purchase of goods were reported appropriately in the income tax return filed for the respective year, whereas sales of goods and service were not bifurcated appropriately while filing the return, due to this sole reason the turnover for the appellant on prima facia ground appears to be higher than the basic exemption limit of service tax Notification No. 33/2012-ST dated 20.06.2012 in the FY 2014-15 and FY 2016-17 and hence, notice for the service tax turnover mis-match between Income Tax Return and service tax notice were issued to the appellant. However, the actual taxable service is well within the limit of basic exemption limit of service tax Notification No. 33/2012-ST dated 20.06.2012. Accordingly, no service tax is payable thereon as per section 66B of the Act and it is for the said reason, the appellant neither applied for service tax registration nor charged and/or collected service tax from their clients.
- In case of works contract, 40% or 70% or 60% of gross receipts is service portion therefore only that part, which is service portion has to be considered for the purpose of computing taxable value for Notification No. 33/2012-ST dated 20.06.2012.
- The appellant was under bona fide belief during the year under consideration that their activity is covered by the exemption Notification No. 33/2012 ST dated 20.06.2012 provides an option to the service provider to avail of exemption from taxable services of aggregate value not exceeding the limit of Rs. 10 lacs and therefore, no service tax is payable thereon as per section 66B of the Act and it is for the said reason, the appellant neither applied for service tax registration nor charged and/or collected service tax from their clients.



- There was no deliberate withholding or concealment of essential information, hence extended period in terms of section 73(1) is not at all applicable. He was not required to take/ obtain service tax registration and was not liable to pay service tax on the service and hence there was no case of evasion of tax. Therefore, he is neither liable for any penal action nor any service tax, interest or penalty as alleged in impugned order.
- Presume for time being service termed as work contract service which is not in real sense in appellant case then Rule 2A- Determination of value of service portion in the execution of a works contract as per the Service Tax (Determination of Value) Rules, 2006 prescribed the for valuation of service portion in Work Contract Service is notified by Notification No. 24/2012-ST as updated by Notification No. 11/2014-ST where in prescribed rate was provided for service out of total value to be termed as service however, it was not distinguished the applicability of Rule 2A in the impugned order and simply mentioned the fact that appellant not submitted the requisite information. It is to note that Rule 2A is deeming rule of service value out of total value wherein no evidence and additional documents required for the valuation in this rule however, the adjudicating authority failed to give relief under this rule and passed the pro revenue order merely on presumption and assumption which suits deems feet to levy the demand.
- The officers have issued the SCNs apparently on the basis of an extended period of 5 years from the relevant date, 5 Year for the F.Y 2014-15 is expired by the 31.03.2020 and notice was issued much after the 31.03.2020. Difference in receipts as per ITR and Service Tax or non-application of Service tax number does tantamount to any fraud leading to notices asking for 5 years old information. Enquiry up to 5 year can be made only if service tax has not been paid due to fraud, collusion, willful statement or suppression of facts. If receipts as per Income Tax are no tallying, it does not mean there is fraud, collusion, willful statement or suppression of facts. There can be a number of reasons for the mismatch.
- When service tax is not payable the demand of interest would automatically fail.
- The impugned order is incorrect in proposing to impose penalties under various sections 77 and 78 of the Act since the said sections do not apply to the facts and circumstances of this case.



- The proposal to impose mandatory penalty under section 78 of the Act is not justified for the reason that the issue entirely revolves around bonafide contra views of the appellant and the Revenue and involves principles of interpretation of statutory provisions and there cannot be any question of attributing malafides to the appellant.

4. Personal hearing in the case was held on 24.01.2023. Shri Aagam Shah, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submission made in 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 to FY 2016-17.

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. The appellant have in their written submission dated 20.10.2020 submitted various documents and have, inter-alia, claimed value based exemption under Notification No. 33/2012-ST dated 20.06.2012. Further, they had claimed abatement applicable to works contract service and sought application of Rule 2A of the Service Tax (Determination of Value) Rules, 2006.

7.1 I find that the adjudicating authority has, while confirming the demand, also not specified the category of service in respect of which service tax is sought to be levied and collected and held / discussed as under:

"17. Further, Rule 2A of the Service Tax (Determination of Value) Rules. 2006 provides for valuation in respect of service portion in Works Contract. The term 'Works Contract' has been defined at Sec. 65B(54) of the Finance Act, 1994 as under:

"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 movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;

In the instant case, the assessee has not furnished any Work Contract/ Agreement, copy of sales invoices and as such the revenue is not in a position to ascertain whether transfer of property in goods is involved in the execution of such contract which leviable to tax as sale of goods. This is especially so in light of the fact that the contract maybe a Work Contract or a Labor Contract in terms of the provisions of Section 194C of the Income Tax Act. In case of a Labor Contract, there would be no transfer of property in goods and the said works would not fall within the ambit of Works Contract as specified under Sec. 65B(54) of the Finance Act, 1994. From above it appears that the valuation in terms of Rule 2A of the Service Tax (Determination of Value) Rules, 2006 can't be extended to the assessee."



Hence it is apparent that the adjudicating authority was not sure about the nature of service provided by the appellant.

8. I also 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 and for the FY 2015-16 to FY 2017-18 (up to Jun-2017), the SCN stated as below:

"Service Tax liability not paid during the financial year 2015-16 to 2017-18 (up to June 2017), to be ascertained in future, should not be demanded and recovered from them under proviso to Sub-section (1) of Section 73 of Finance Act, 1994."

8.1 While passing the impugned order, the adjudicating authority also confirmed the demand for the FY 2015-16 and FY 2016-17 by discussed as under:

"From the above discussion, it needs to be noted that the subject SCN where demand has not been quantified is in vague and not sustainable therefore I also proceed to adjudicate the instant show cause notice on the basis of charging para of the SCN wherein demand is quantified for the year 2014-15 and further since noticee has submitted documents for F.Y 2014-15 to 2016-17. I consider the same to adjudicate the instant show cause notice. And keeping aside the levy of Service Tax for the financial Year 2017-18 (Up to June 2017), which was not ascertainable at the time of issuance of subject SCN."

8.2 In this regard, I find that when in the SCN the demand has not been quantified for the FY 2015-16, however, on the basis of the documents provided by the appellant in their reply to SCN; the adjudicating authority also confirmed the demand of Service Tax for the FY 2015-16 and FY 2016-17. The adjudicating authority was required to verify the contention of the appellant and should have called for the further documents / details for verification, if required. However, I find that the adjudicating authority, based on the whole income figures submitted by the appellant for the FY 2014-15 to FY 2016-17, adjudicated the case, without specified the category of service in respect of which service tax is sought and without given ample opportunity for personal hearing to the appellant, by specifying 3 (three) different dates i.e. 14.02.2022, 16.02.2022 and 18.02.2022 in the single letter / notice for scheduling personal hearing, and confirmed the service tax for the FY 2015-16 and FY 2016-17 also. Therefore, I find that the confirmation of demand by the adjudicating authority for the FY 2015-16 and FY 2016-17 in the impugned order is not justifiable, legal and proper and also is in violation of the principles of natural justice.



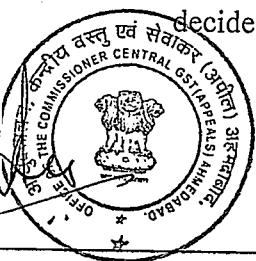
9. I find that the appellant have contended that they were engaged in business of sale of goods used in the constructions and service of Civil construction labour work during the relevant time and invoices of sales for the said supply of goods and services were issued separately for the traded goods and service to the customers. They have also submitted all sale invoices of goods and services along with appeal memorandum. They have submitted that sale of goods is not taxable in service tax law. They have also submitted that they were eligible for benefit of threshold limit of exemption as per the Notification No. 33/2012-ST dated 20.06.2012 and, therefore, they have not obtained Service Tax Registration and not paid Service Tax. They have also submitted bifurcation of the amount of sales and service, which is as under:

(Amount in Rs.)

Financial Year	Amount for Sale of Goods	Amount for Service provided	Total
2014-15	1,24,831	8,98,327	10,23,158
2015-16	1,06,440	5,90,360	6,96,800
2016-17	12,38,297	8,25,530	20,63,827

9.1 I am of the considered view that the appellant cannot seek to establish their eligibility for value based exemption at the appellate stage without submitting such evidences before the adjudicating authority. They should have submitted the relevant records and documents before the adjudicating authority, who is best placed to verify the authenticity of the documents as well as their eligibility for exemption. I also find that the adjudicating authority has also not given sufficient opportunity for personal hearing to the appellant, by specifying 3 (three) different dates i.e. 14.02.2022, 16.02.2022 and 18.02.2022 in the single letter / notice for scheduling personal hearing, which is in violation of the legal provisions under Section 33A(2) of the Central Excise Act, 1944, as made applicable to Service Tax vide Section 83 of the Finance Act, 1994. I find that the adjudicating authority was required to give adequate and ample opportunity to the appellant for personal hearing and only thereafter, the impugned order was required to be passed, specifically in the circumstances of the case that the SCN has been issued merely on the basis of data 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.

9.2 Considering the facts of the case as discussed herein above and in the interest of natural justice, I am of the considered view that the case is required to be remanded back to the adjudicating authority to consider the claim of the appellant for exemption from Service Tax on the basis of the documents submitted by them along with appeal memorandum and decide the case accordingly.



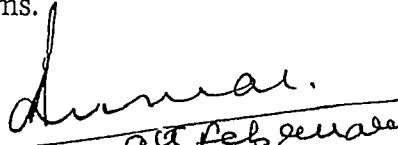
10. It is also observed that the appellant have also contended that the demand is barred by limitation. In this regard, I find that the due date for filing the ST-3 Returns for the period April, 2014 to September, 2014 was 14th November, 2014 (as extended vide Order No. 02/2014-ST dated 24.10.2014). Therefore, considering the last date of which such return was 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 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. The demand needs to be re-quantified considering the fact that the demand for period April, 2014 to September, 2014 is barred by limitation. The rest of the demands needs to be examined on merits and then correct assessment needs to be arrived at.

11. The appellant is directed to submit all the records and documents in support of their claim for exemption from Service Tax before the adjudicating authority within 15 days of the receipt of this order. The adjudicating authority shall after considering the records and documents submitted by the appellant decide the case afresh by following the principles of natural justice.


12. In view of the above discussion, I remand the matter back to the adjudicating authority to reconsider the issue a fresh and pass a speaking order after following the principles of natural justice.

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

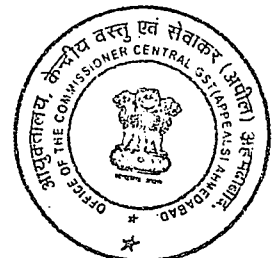
The appeal filed by the appellant stands disposed of in above terms.


(Akhilesh Kumar) 09 February 2023
Commissioner (Appeals)

Attested


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

Date : 09.02.2023



By RPAD / SPEED POST

To,
M/s. Ganeshbhai Amrabhai Makwana,
59, SarthiBunglows,
Opp. Tata Work Shop, Chandkheda,
Ahmedabad – 382424

Appellant

The Deputy Commissioner,
CGST, Division-VII,
Ahmedabad North

Respondent

Copy to :

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

(for uploading the OIA)

- 5) Guard File
- 6) PA file

