



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:20230264SW0000460377

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1258/2022-APPEAL 18772 - 87772
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-160/2022-23
दिनांक Date : 16-02-2023 जारी करने की तारीख Date of Issue 23.02.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. GST-06/D-VI/O&A/224/Jupiter/AM/2021-22 दिनांक:
31.03.2022, issued by Deputy/Assistant Commissioner, CGST, Division-VI, Ahmedabad-
North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Jupiter Engineers,
22-Manav Residency, Opposite Suryoday Bungalows,
Science City Road, Sola,
Ahmedabad-380060

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 या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

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



(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 अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention 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 .

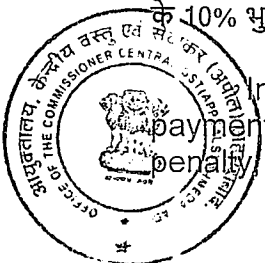
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

M/s. Jupiter Engineers, 22-Manav Residency, Opposite Suryoday Bunglows, Science City Road, Sola, Ahmedabad-380060 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in Original No. GST-06/D-VI/O&A/224/Jupiter/AM/2021-22 dated 31.03.2022 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant were holding Service Tax Registration No.AGPPP1367GST001.

2. The facts of the case, 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, 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 difference in the value of services from ITR and Gross Value of Services provided in ST-3 returns was to the tune of Rs.18,46,877/- It appeared that the appellant has discharged less service tax liability amounting to Rs.2,28,275/- on the above mentioned difference for F.Y. 2014-15, as compared to the income 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. 2015-16 & F.Y. 2016-17. However, neither any documents nor any reply was submitted by them for non-payment of service tax on such receipts. Therefore, the assessable value for the F.Y.2015-16 to F.Y. 2017-18 (upto June, 2017) could not be ascertained. However, in terms of Master Circular No.1053/02/2017-CX dated 10.03.2017, the future liability if any, was kept open to be covered for said SCN.

2.1 Therefore, a Show Cause Notice (SCN) No.GST-06/04-403/O&A/Jupiter/2020-21 dated 20.09.2020 was issued to the appellant proposing demand and recovery of service tax amount of Rs.2,28,275/- not paid on the differential value of income received during the F.Y. 2014-15, along with interest under Section 73(1) and Section 75 of the Finance Act, 1994; respectively. Imposition of penalty under Sections 76, 77 and penalty under Section 78 of the Finance Act, 1994 were also proposed.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.2,28,275/- was confirmed alongwith interest. Penalty of Rs.10,000/- was



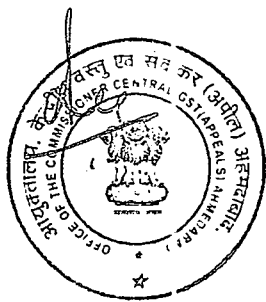
imposed under Section 77 and equivalent penalty of Rs.2,28,275/- was also imposed under Section 78.

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

- There was no suppression of value of taxable services received or provided hence, invocation of extended period of limitation is without any jurisdiction and legally not sustainable.
- Demand is based on the reconciliation of ITR data and ST-3 Returns with the financial statement is not sustainable. The accounts of the appellant are duly audited by the C.A. and they are also filing the ST-3 Returns regularly.
- The difference in income is due to the services provided to the SEZ units which should be treated as 'Export of service' in terms of Rule 6A of the Service Tax Rules, 1994 and exempt under Section 26 of SEZ Act, 2005, which was not considered by the adjudicating authority. Also, in terms of Point of Taxation Rules, 2011, the liability arises on receipt basis.
- As there is no wilful-misstatement, imposition of penalty under Section 78 is not sustainable.
- Penalty under Section 77 is also not imposable as there is no short payment .

3.1 Further, the appellant also submitted additional written submission wherein they contended that;

- The SCN dated 29.09.2020 is time barred as the ST-3 Returns for the period (April, 2014 to September, 2014) and (October, 2014 to March, 2015) was filed on 21.10.2019 & 24.04.2020 respectively. So, considering the relevant period the SCN should have been issued by 21.10.2019, whereas the actual date of issuance of SCN is 29.09.2020. Even the extension of limitation period by Section 6 of the Taxation & Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 would not be applicable to the present case as such Act is not applicable to Chapter-V of the F.A., 1994, due to repealed provisions of Section 173 of the CGST Act, 2017. They placed reliance on various case laws: J.P.Jani, Income Tax Officer,- 1969 (72) ITR 595 (SC), Hanuman Prasad- 1967 AIR SC 565, Kolhapur Cane Sugar Works Ltd-2000(119) ELT SC.

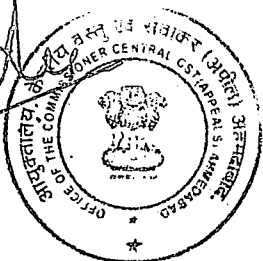


- The actual difference in the value of total services provided as per ST-3 Returns and as per Financial Statements is Rs.-9,20,679/- (31,84,325-41,05,004) out of which Rs.-3,79,045/- pertains to exempt services and the balance of Rs.-5,41,634/- pertains to taxable service provided during the year under consideration by the appellant, all these facts were not considered by the adjudicating authority. Though the difference of value exempt service amounting to Rs.-3,79,045/- is required to be shown in the ST-3 Returns but the same was not shown, yet it does not change the character of exempt service. Further, for the difference of Rs.-3,79,045/-, the service provided to Adani Hazira Port P. Ltd, Teja Industries (SEZ) P. Ltd was to the tune of Rs.2,79,045/- and the balance of Rs.1,00,111/- is related to exempt service provided to Malani Construction Co. for commissioning and installation of D.G. set at Civil Hospital, Sola Ahmedabad; being a government establishment exempted vide SI.No.12(a) of Notification No.25/2012 dated 20.06.2012. They also provided copies of Invoice, Ledgers to establish the above claim. Therefore, they are liable to pay service tax amounting to Rs.66,946/- only as major portion of demand gets nullified in view of above submission.
- Penalty under 78 is not automatic as element of mensrea is essential for levy of penalty. Also penalty under Section 77 is also not imposable. They placed reliance on case laws of 2012 (27) STR 225 (Kar), Motilal Padampat Sugar Mills Co. Ltd -1979 (118) ITR 326.

4. Personal hearing in the matter was held on 08.02.2023. Shri Bhavik Khandhediya, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum and the additional written submission made on 02.02.2023.

5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum and in additional written submission dated 02.02.2023 as well as the submissions made at the time of personal hearing. The issues to be decided in the present appeal are as to whether;

- (i) The demand raised vide SCN dated 20.09.2020 for the F.Y.2014-15, is time barred or otherwise?



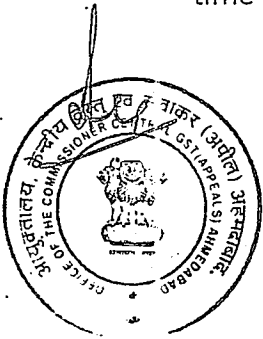
- (ii) Whether the service tax demand of Rs.2,28,275/- confirmed in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise?

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

6. It is observed that the appellant is registered with the department. They had filed the ST-3 Returns for April, 2014 to September, 2014 on 21.10.2014 and for the period October, 2014 to March, 2015, they had filed the return on 24.04.2015. Therefore, considering the date of filing of return, I find that the demand for the period April, 2014 to September, 2014 should have been raised on or before 21.10.2019, but the notice was issued on 25.09.2020. Hence, I find that the demand for the period April, 2014 to September, 2014 is time barred as has been issued 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 for April, 2014 to September, 2014 is time barred, in terms of the provisions of Section 73 of the Finance Act, 1994.

6.1 For the remaining period of demand i.e. from October, 2014 to March, 2015, the demand should have been raised on or before 24.04.2020 as the return was filed on 24.04.2015, but the SCN was issued on 20.09.2020. 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 24.04.2020, but the same was issued on 25th September 2020. Considering the relaxation provided vide above Ordinance in the time limit for issuance of SCN, I find that the notice covering the period from October, 2014 to March, 2015 was issued well within limitation.

6.2 Further, I also do not agree with the contention of the appellant that the extension of limitation period granted vide Section 6 of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (No.2 of 2020) dated 31.03.2020, is not applicable to Finance Act, 1994, because, the wordings of Section 6 clearly states that the relaxation of time limit shall be applicable to the Customs Act, 1962, Customs Tariff Act, 1975 and

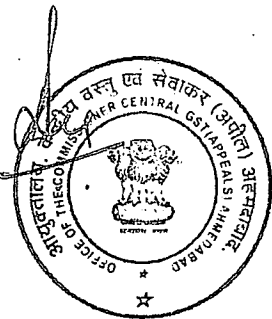


Chapter V of the Finance Act, 1994 also. The legal provisions for the levy and collection of Service Tax were introduced through Finance Bill 1994. Thus, the law relating to Service Tax is still governed by Chapter V of the Finance Act, 1994 (Sections 64 to 96I).

6.3 Section 173 of the CGST Act provides that save and otherwise provided in the said Act, Chapter V of the Finance Act, 1994, shall be omitted. However, Section 174 of the CGST Act contains repeal and saving clauses. Sub-section (1) thereof provides that save as otherwise provided, on and from the date of commencement of the said Act, several Acts mentioned therein would stand repealed. Sub-section (2) of Section 174 is a saving clause and it, *inter-alia*, provides that the amendment of the Finance Act, 1994 to the extent mentioned in sub-section (1) of Section 173, shall not revive anything not in force or existing at the time of such amendment or repeal. It shall not affect the previous operation of the amended Act or repealed Acts and orders of anything duly done or suffered thereunder or affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts. Further, Clause (e) of this saving clause reads as under:

"(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;"

6.4 Thus, a conjoint reading of Section 173 and 174(2)(e) would show that while bringing an omission to the provision of Chapter V of the Finance Act of 1994, a savings clause for continuing with the proceedings initiated/to be initiated was also duly provided. Although Chapter V of the Finance Act of 1994 stood omitted under Section 173, but the savings clause provided under Section 174(2)(e) will enable the continuation of the investigation, enquiry, verification etc., that were made/to be made under Chapter V of the Finance Act of 1994. In the disputed period (for which the demand was raised), Chapter V of the Finance Act, 1994 was very much on the statute book. The present proceedings cannot be carried out under the GST Rules, because, the concept of taxation under the GST regime is not the same. For the purpose of adjudication and other aspects related to service tax, the mechanism provided under the Service Tax Act/Rules has to be followed. Thus, I find that Section 173 of the CGST Rules, 2017 cannot be understood to



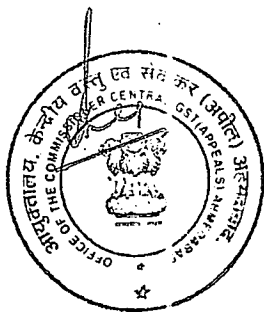
have superseded the Finance Act, 1994. The Finance Act, 1994 and Service Tax Rules, 1994 will continue to govern and apply for the purpose of demand raised under their relevant provisions.

6.5 Therefore, I find that the provision of Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (No.2 of 2020) shall be applicable to Service Tax cases also. As the demand was raised under the Finance Act, 1994, the provision of Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (No.2 of 2020) shall be applicable to the present case also. The relevant text of Section 6 is reproduced below for reference:-

6. Notwithstanding anything contained in the Central Excise Act, 1944, the Customs Act, 1962 (except sections 30, 30A, 41, 41A, 46 and 47), the Customs Tariff Act, 1975 or Chapter V of the Finance Act, 1994, as it stood prior to its omission vide section 173 of the Central Goods and Services Tax Act, 2017 with effect from the 1st day of July, 2017, the time limit specified in, or prescribed or notified under, the said Acts which falls during the period from the 20th day of March, 2020 to the 29th day of September, 2020 or such other date after the 29th day of September, 2020 as the Central Government may, by notification, specify, for the completion or compliance of such action as...

6.6 In view of the above discussion and findings, I find that the demand for the period from April, 2014 to September, 2014, is not legally sustainable, being time barred. However, the demand covering period from October, 2014 to March, 2015 is sustainable on limitation.

7. To examine whether the demand held as sustainable on limitation above is also sustainable on merits or not, I find that the appellant have contended that the adjudicating authority has not considered the Labour services provided to SEZ units (Teja Industries (SEZ) P. Ltd), which was to the tune of Rs.2,79,045/-. They have claimed that these services should be considered as deemed exports of service and are exempted by virtue of Notification No.12/2013 dated 01.07.2013 read with Section 26 and 51 of the SEZ Act, 2005. Further, they are contended that the value of service amounting to Rs.1,00,111/- provided to Malani Construction Co. for commissioning and installation of D.G. Set at Civil Hospital, Sola Ahmedabad is also exempted as the same was rendered to a government establishment and exempted vide Sl.No.12(a) of Notification No.25/2012-ST dated 20.06.2012. They provided copies of Invoice, Ledgers to establish the above claim. They, therefore, claim that the remaining service tax liability shall be only Rs.66,946/-.

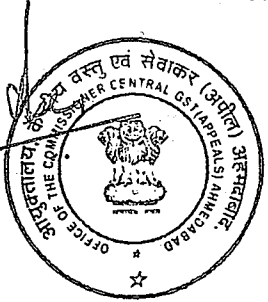


7.1 On going through the impugned order, it is observed that the appellant before the adjudicating authority has neither filed a written submission nor appeared for personal hearing to defend their case, though sufficient dates for hearing were granted. This shows that the appellant has approached the whole matter in a casual way. However, considering the fact that the demand in the instant case has been raised merely on the basis of the sales of the services under Sales/Gross Receipts from services (Value of ITR) or the Value of TDS, which in no way corroborate the allegation that the respondent was actually rendering taxable service and the fact that the demand for the period (April, 2014 to September, 2014) is held as time barred, I find that the demand for (October, 2014 to March, 2015) needs to be re-examined in light of the documents submitted by the appellant.

7.2 Since the appellant have submitted the documents like the audited Balance Sheets, Invoices, Ledgers etc which were not submitted earlier before the adjudicating authority, I find that in the interest of natural justice, it would be proper that the matter is remanded back to the adjudicating authority, to re-examine the demand considering the Board's Instruction dated 26.10.2021, wherein the field formations were directed that while analyzing the ITR-TDS data received from Income Tax Department, a reconciliation statement has to be sought from the taxpayer for the difference and that whether the service income earned by them for the corresponding period is attributable to any of the negative list services specified in Section 66D of the Finance Act, 1994 or exempt from payment of Service Tax, due to any reason, needs to be examined.

8. The appellant is directed to submit all the relevant documents /details, copy of contracts to the adjudicating authority, including those submitted in the appeal proceedings, in support of their contentions, within 15 days to the adjudicating authority. The adjudicating authority shall decide the case afresh on merits and accordingly pass a reasoned order, following the principles of natural justice.

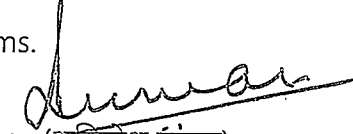
9. In view of above discussion and findings, the demand for the period April, 2014 to September, 2014 is set-aside and the demand pertaining to period October, 2014 to March, 2015, is remanded back to the adjudicating authority to pass an order after examination of the documents and verification of the claim of the appellant.



11. Accordingly, the impugned order is set-aside. The appeal filed by the appellant in respect of demand covering the period April, 2014 to September, 2014 is allowed being held as time barred. The appeal for the remaining period is allowed by way of remand.

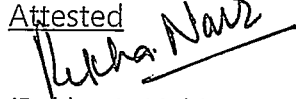
अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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


(अखिलेश कुमार)
16 February 2023
आयुक्त(अपील्स) 2023

Date: 16.02.2023

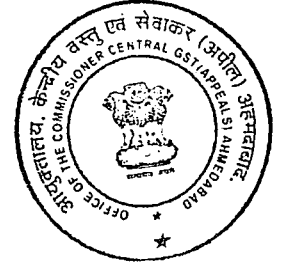
Attested



(Rekha A. Nair)

Superintendent (Appeals)

CGST, Ahmedabad



By RPAD/SPEED POST

To,

M/s. Jupiter Engineers;
22-Manav Residency,
Opposite Suryoday Bungalows,
Science City Road, Sola,
Ahmedabad-380060

- Appellant

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

- Respondent

Copy to:

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

