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- टेलेफैक्स07926305136

DIN:20230264SW0000818995

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STD/146/2022-APPEAL /8766 - 72

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-166/2022-23**
दिनाँक Date : **20-02-2023** 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. **105/ADC/GB/2021-22** दिनाँक: **25.03.2022**, issued by the Additional Commissioner,CGST, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

Appellant

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

Respondent

M/s. Ubec Technologies India Pvt. Ltd.,
72/427- Vijaynagar, Naranpura,
Ahmedabad-380013

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 पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

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

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

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

(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलें 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 डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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. Registar 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 ओदश 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 हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की 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 in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलों के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है ।(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

(i) *(Section)* खंड 11D के तहत निर्धारित राशि;
(ii) लिया गलत सेनवैट क्रेडिट की राशि;
(iii) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇨ **यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील' दाखिल करने के लिए पूर्व 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 the Assistant Commissioner, CGST, Division-VII, Ahmedabad North, Ahmedabad (hereinafter referred to as '*the appellant*') in pursuance of Review Order No.10/2022-23 dated 23.06.2022 issued under Section 84(1) of the Finance Act, 1994 by the Commissioner, Central GST, Ahmedabad North, against the Order-in Original No.105/ADC/GB/2021-22 dated 25.03.2022 (in short '*impugned order*') passed by the Additional Commissioner, Central GST, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*') in the case of M/s. Ubec Technologies India Pvt. Ltd., 72/427-Vijaynagar, Naranpura, Ahmedabad-380013 (hereinafter referred to as '*the respondent*').

2. The facts of the case, in brief, are that the respondent were engaged in the business of providing taxable service and were holding Service Tax Registrations No.AABCU1752FSD001. Based on the scrutiny of data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 to 2016-17, it was noticed that the 'Sales/Gross Receipts' from services declared in ITR/Form 26AS of the respondent were not tallying with the 'Gross Value of Service' declared in their ST-3 Returns. The respondent had declared less taxable value in their ST-3 Return for the F.Y. 2015-16 & F.Y. 2016-17, 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 respondent 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, based on the data received from I.T Department, service tax liability amounting to Rs.63,13,526/- was calculated.

2.1 A Show Cause Notice (SCN) No.STC/15-180/OA/2020 dated 07.12.2020 was, therefore, issued to the respondent proposing recovery of service tax demand of Rs.63,13,526/- not paid on the differential value of income received during the F.Y. 2015-16 to F.Y. 2016-17, along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalty under Sections 77 and 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.63,13,526/- was dropped alongwith interest and penalties. The adjudicating authority has held that the respondent is providing Works Contract Services to M/s. Oil & Natural Gas Corporation Ltd (ONGC) and were paying service tax and filing ST-3 Returns. Further, on going through respondent's submission, Audited

Balance Sheets, IT Returns, STRs and copies of invoices for the year 2015-16 to 2016-17, the adjudicating authority had prepared a reconciliation statement pointing out that the main differential value not chargeable to service tax were towards value of trading sales, deduction of Service Tax deposited, Adhoc provision done and Work In Progress amount received by the respondent. The tabulated chart is as under:

	PARTICULARS	**2015-16**	**2016-17**
A	Total value as per 26AS / SCN	52339173	61726275
B	Value as per ST 3	32881956	38444740
C	Differential value on which SCN issued	19457217	23281535
D	Income from sale of goods	10393270	15111090
E	Service Tax	4614858	5755639
F	**Adhoc provision done**	**1578000**	**2620000**
G	**Work In Progress**	**3114446**	**557937**
	Total (D+E+F+G)	19700574	24022666
	Difference(C-H) (Credit Notes)	(-) 243357	(-) 763131

2.3 The adjudicating authority, while allowing deduction for amount received by the service provider from ONGC as work in progress, found that the same is not includible in the taxable income as the work was not completed and the same amount in notes of account of audited balance sheet is shown as inventories at the end of the year. Further, in respect to amount received as ad-hoc provision made, the adjudicating authority found that no invoice has been issued, hence, same cannot be considered as revenue receipt and allowed deduction from differential value on which SCN has been issued. The adjudicating authority found the claim of the respondent as correct and accordingly allowed deduction of income reflected as 'Work in Progress' and 'Adhoc provision done' from their total income shown under Form-26AS.

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

- The Adjudicating Authority has erred while allowing deduction for amount received by respondent from ONGC for work in progress and ad-hoc provision done, as the same are not as per provisions of Section 67 and 67 A of the Finance Act, 1994. These amounts were received before and during provision of service, hence, are required to be added in the assessable value.
- The adjudicating authority has also erred in finding that no invoice has been generated by the service provider for allowing deduction of these

amounts. In terms of Section 67A of the Finance Act, 1994, the rate and value of service tax shall be applicable as was in force at the time when the taxable service has been provided or agreed to be provided.

- The adjudicating authority also erred in not taking into the cognizance of correct point of taxation on the receipt of these amounts. In terms of explanation to the Point of Taxation Rules, 2011, the point of taxation shall be the date of receipts of each such advance.
- Thus, the amounts received by the respondent and representing as work in progress and ad-hoc provision done were received towards provision of services and service tax was required to be paid as and when such amount were received by service provider. The adjudicating authority, by allowing deduction of such amount, has resulted in incorrect and ineligible waiving of such short payment of service tax amounting to Rs.11,57,096/- and interest thereon.
- The impugned order, therefore, needs to be set-aside to the extent of service tax demand amounting to Rs.11,57,096/- not confirmed under the provisions of Section 73 of the Finance Act, 1994 with penalty under Section 78 of the Finance Act, 1994 with recovery of interest under the provisions of Section 75 of the Finance Act, 1994.

4. The respondent has filed a cross-objection dated 06.02.2023 contesting the grounds of appeal on following grounds:-

- The ONGC has deducted TDS on provisions basis as the actual service has not been supplied by the respondent. Hence, service tax on the said portion of service tax has not been collected and paid by the respondent as the provision of service has not been completed by the respondent.
- Form 26AS cannot be a basis for determining Service Tax liability unless there is evidence to prove that taxable service was rendered. They placed reliance on following case laws:-
  - Kush Construction – 2019 (34) GSTL 606 (Tri-All)
  - Luit Developers Pvt. Ltd
  - Faquir Chand Culati Vs Uppal Agencies Pvt. Ltd- 2008(12) STR 401 (SC)
- The assumption that the respondent has provided taxable service is baseless. As the provision of service was not completed hence was shown in Work in Progress under Income tax Audit report.

5. Personal hearing in the matter was held on 08.02.2023. Shri Viral R. Shanghvi, Chartered Accountant, appeared on behalf of the respondent. He reiterated the

submissions made in the cross-objection filed against the appeal. He also submitted audit report for both the financial years during hearing.

6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum, the submission made by the respondent in the cross-objection as well as those made during personal hearing. The issue to be decided in the present case is as to whether the service tax demand to the extent of Rs.11,57,096/- dropped alongwith interest and penalties 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. 2015-2016 to F.Y. 2016-17.

7. On examination of the SCN, it is observed that the total service tax liability of the appellant amounting to Rs. Rs.63,13,526/- for the F.Y. 2015-16 to F.Y. 2016-17 was ascertained on reconciliation of the income shown in the ST-3 Returns filed by the respondent vis-a-vis the amount shown as 'Sales of Services' in their ITR filed with the Income Tax Department. It is observed that the respondent was providing Works Contract Service to ONGC. They were paying Service Tax and were filing ST-3 Returns. The adjudicating authority has, after consideration of submissions made by the respondent, dropped the entire demand of Rs.63,13,526/-. The adjudicating authority has also given a reconciliation of the difference in the taxable value as per ST-3 Returns and income from service as appearing in the ITR /26 AS. The present appeal has been filed by the department on the limited grounds that the adjudicating authority has wrongly allowed the deduction of income reflected under head 'Work in Progress' and 'Adhoc provision done' in their financial accounts for the respective financial years and thereby erroneously dropped the demand of Rs.11,57,096/-.

7.1 The provisions of the Finance Act, 1994 and rules made there under provides that service provider is liable to pay service tax on the consideration received against the services agreed to be provided. Section 67(1) of the Act is for valuation of taxable services for charging service tax, which provides that in a case where the provision of service is for a consideration in money, the gross amount charged by the service provider for such service provided or to be provided shall include any amount that is payable for the taxable services provided or to be provided. To examine the issue in proper perspective, the text of Section 67 & Section 67A of the Finance Act, 1944 are reproduced below;

SECTION [67. Valuation of taxable services for charging service tax. — (1)

Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall, —

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

Explanation. — For the purposes of this section, —

(a) ["consideration" includes —

(i) XXX

[(b) * * * *]

(c) **"gross amount charged"** includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and [book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.]]

SECTION [67A Date of determination of rate of tax, value of taxable service and rate of exchange —

[(1) The rate of service tax, value of a taxable service and rate of exchange, if any, shall be the rate of service tax or value of a taxable service or rate of exchange, as the case may be, in force or as applicable at the time when the taxable service has been provided or agreed to be provided.]

[Explanation. — For the purposes of this section, "rate of exchange" means the rate of exchange determined in accordance with such rules as may be prescribed].

[(2) **The time or the point in time with respect to the rate of service tax shall be such as may be prescribed.]**

7.2 It is observed that the respondent has received income and reflected the same under the head 'Work in Progress' and 'Adhoc Provision Done'. In terms of Section 67(3) of the F.A., 1994, the gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service and the time or the point in time with respect to the rate of service tax shall be determined in terms of the Point of Taxation Rules (POTR for short), 2011. Rule 3 of the POTR, 2011, specifies how the point of taxation shall be determined. Relevant text is reproduced below;

RULE [3. Determination of point of taxation. - For the purposes of these rules, unless otherwise provided, 'point of taxation' shall be,-

(a) the time when the invoice for the service [provided or agreed to be provided] is issued :
[**Provided** that where the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules, 1994, the point of taxation shall be the date of completion of provision of the service.]

(b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment :

[**Provided** that for the purposes of clauses (a) and (b), -

(i) in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service;

(ii) wherever the provider of taxable service receives a payment up to rupees one thousand in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the provider of taxable service, shall be determined in accordance with the provisions of clause (a).]

Explanation - For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.].

Thus, on plain reading of Rule 3 above, it is clear that the point of taxation will either be the (a) time when the invoices are issued; or (b) when invoices not received, the date of completion of provision of service; or (c) if advance is received, then the date when such advance amount is received to the extent of such advance.

7.3 In the instant case, TDS has been deducted by ONGC while making payment to the respondent, which the respondent has shown under head 'Work in Progress' and 'Adhoc provision done'. For the income reflected under 'work in progress', they have claimed that the bills/invoices would be issued when the work gets completed and, therefore, the income shall not form part of taxable income for the relevant year as no service was rendered. They have made provision of these amounts at Note 13 of the Balance Sheet. Similarly, for the Adhoc provision done, they have claimed that TDS was deducted as per the requirement of accounting standard, for which no invoices have been issued. As there is no receipt, they have to recognize it as liability.

7.4 It is observed that the TDS is deducted by the service recipient, who has made such expenses while making the payment to the service provider/respondent. The ONGC, while making payment to the respondent, has deducted the tax at source, so the fact that the respondent has received a consideration towards the work contract service rendered to ONGC is not in dispute. In terms of the proviso to Rule 3 of POTR, 2011, in case of continuous supply of service, where the provision of the service is either whole or part, is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service

provider. The date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service. So, in terms of Rule 3 and explanation above, the point of taxation shall be the time when any payment is received for provision of whole or part of service or the time where payment is received as advance towards provision of taxable service. Thus, all such receipts shall be considered towards taxable income.

7.5 I find that the respondent have not disputed the receipt of payment but are only disputing the fact that the point of taxation shall be the date of issue of invoice/date of completion of service to decide the taxability of event and the income as taxable. I do not find any merit in such argument. The point of taxation shall be the time when any amount charged /advances charged, is received by the service provider towards the provision of taxable service. The respondent was providing Works Contract Service under a contract and, therefore, mere completion of service as a whole shall not determine the taxability of events or income. I find that the amounts received by the respondent and represented as work in progress and ad-hoc provision done were received towards provision of services, hence, service tax was required to be paid as and when such amount were received by them. The adjudicating authority, by allowing deduction of such income from the taxable income, has led to incorrect and ineligible deduction which resulted into short payment of service tax amounting to Rs.11,57,096/-

7.6 The adjudicating authority has observed that the respondent has claimed deduction of Rs.31,14,446/- & Rs.5,57,937/- as work in progress. He relied on the submission made by the respondent claiming that though TDS was deducted by their service recipient, but the work was in progress, therefore, bills would be raised as and when the work gets completed. He also observed that in Note-13 of the Balance Sheet, such provision has been made. Similarly, for the adhoc provision done, the adjudicating authority observed that ONGC has deducted TDS on provisional basis for which no invoice have been raised by the respondent. It has been held that when there is no revenue receipt by the respondent, such provisioning cannot be considered as taxable income.

7.7 I have gone through the relevant pages of Audited Balance Sheet submitted by the respondent. On going through the same, it is observed that Note-13 is regarding *'increase /decrease in inventories of work in progess'* under the head '*Expenses*', which no way justify the argument put-forth by the adjudicating authority. Moreover, the respondent has not provided the relevant page depicting the Ad-hoc provision done in the books of accounts. Thus, the above contentions made by the respondent are not supported by any documentary evidence. I find that the respondent also did not submit

the Balance Sheet of the subsequent financial years to justify the claim that payments for which TDS was deducted were subsequently received in successive financial years. Thus, the deduction of income allowed by the adjudicating authority was merely on the basis of entries reflected in the books of accounts with no reconciliation of the books of accounts of successive financial years. Thus, to that extent, I find that the deduction allowed by the adjudicating authority on the income received by the respondent representing as work in progess and ad-hoc provision, is legally not sustainable.

8. Further, the respondent has contended that Form 26AS cannot be a basis for determining Service Tax liability unless there is evidence to prove that taxable service was rendered. They have placed reliance on the decisions passed in the case of Kush Construction – 2019 (34) GSTL 606 (Tri-All) & Faquir Chand Gulati Vs Uppal Agencies Pvt. Ltd- 2008(12) STR 401 (SC). I have gone through the case laws relied by the respondent, it is observed that in the case of Kush Construction, Hon'ble Tribunal has held that "*We note that Revenue cannot raise the demand on the basis of such difference without examining the reasons for said difference and without establishing that the entire amount received by the appellant as reflected in said returns in the Form 26AS being consideration for services provided and without examining whether the difference was because of any exemption or abatement, since it is not legal to presume that the entire differential amount was on account of consideration for providing services. We, therefore, do not find the said show cause notice to be sustainable. In view of the same, we set aside the impugned order and allow the appeal.*" Further, the judgment passed in the case of Faquir Chand Culati Vs Uppal Agencies Pvt. Ltd- 2008(12) STR 401 (SC) was in respect of the appeal filed against the Order dated 3-2-2004, passed by the National Consumer Disputes Redressal Commission.

8.1 I find that the above citation relied by the respondent are not squarely applicable to the present case, as in the instant case the adjudicating authority after considering the submissions of the respondent, dropped the demand. The department in the present appeal, contended that the adjudicating authority has erroneously dropped the demand of Rs.11,57,096/- by allowing deduction claimed by the respondent, which is improper. I find that the impugned order passed is not legal and proper in as much as the reconciliation of accounts co-relating with the income received in succeeding financial years vis-à-vis the legal framework was not done. The deduction was allowed merely on the submissions made by the respondent. Thus, I find the adjudicating authority has not passed a speaking order as the findings are not supported by any legal backing or proper reconciliation of accounts. The impugned order, thus, to above extent has been passed without correct re-conciliation and henceliable to be set aside.

9. I, therefore, find that in the interest of justice, it would be proper to remand the matter relating to the demand of Rs.11,57,096/- to the adjudicating authority, who shall decide the case in light of the discussion and findings given above and, accordingly, pass a reasoned order, following the principles of natural justice.

10. Accordingly, the impugned order to above extent is set-aside and appeal filed by the appellant is allowed by way of remand to the adjudicating authority for decision of the case afresh.

11. 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.

20th February, 2023
(अखिलेश कुमार)
आयुक्त (अपील्स)

Date: 20.02.2023

Attested
(Rekha A. Nair)
Superintendent (Appeals)
CGST, Ahmedabad

By RPAD/SPEED POST

To,
The Assistant Commissioner, - **Appellant**
CGST, Division-VII,
Ahmedabad North,
Ahmedabad

M/s. Ubec Technologies India Pvt. Ltd., - **Respondent**
72/427-Vijaynagar,
Naranpura,
Ahmedabad-380013

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.