



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:20230364SW000000F35C

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/106/2023-APPEAL 19853-52
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-207/2022-23
दिनांक Date : 17-03-2023 जारी करने की तारीख Date of Issue 21.03.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 76/AC/D/2021-22/KMV दिनांक: 30.03.2022, issued
by Assistant/Deputy Commissioner, Division-IV, CGST, Ahmedabad-North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Anupji Kamaji Thakor,
LIG-II/Q-1, 804, Gujarat Housing Board,
Village- Sanand, Ahmedabad-382110

2. Respondent

Assistant/Deputy Commissioner, CGST, Division-IV, Ahmedabad North , 2nd
Floor, Gokuldham Arcade, Sarkhej-Sanand, Ahmedabad - 382210

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 :

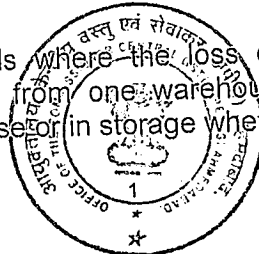
भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

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

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110.001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

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

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



- (क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।
- (A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।
- (c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.
- (1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

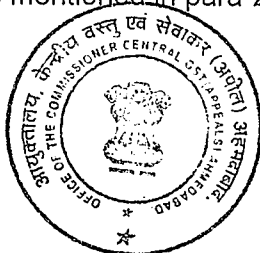
The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

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

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

- (क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004
- (a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the 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 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.

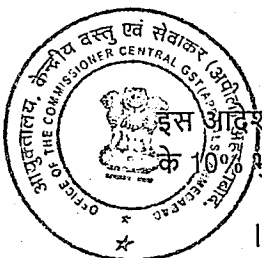
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



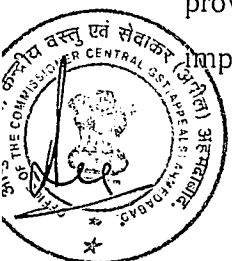
ORDER-IN-APPEAL

The present appeal has been filed by M/s. Anupji Kamaji Thakor, LIG-I/Q-1, 804, Gujarat Housing Board, Village – Sanand, Ahmedabad – 382110 (hereinafter referred to as “the appellant”) against Order-in-Original No. 76/AC/D/2021-22/KMV dated 30.03.2022 and issued on 31.03.2022 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division IV, 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. AIJPT6998D. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the Financial Year 2015-16, it was noticed that the appellant had earned an income of Rs. 14,98,098/- during the FY 2015-16, which was reflected under “Total amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)” filed with 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. V/27-63/Anupji/2020/TPD/UR dated 28.09.2020 demanding Service Tax amounting to Rs. 2,17,224/- for the period FY 2015-16, 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) and Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 2,17,224/- 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 2015-16. Further (i) Penalty of Rs. 2,17,224/- 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) of the Finance Act, 1994 for failure to taking Service Tax Registration; (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(c) of the Finance Act, 1994 for failure to provide documents / details for further verification; and (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994 for failure to assess



correct Service Tax liability and failed to file Service Tax Returns as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994.

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

- The appellant is a small labourer who is engaged in erection of POP and False Ceiling work which is nothing but original works contract services. The said service is eligible for abatement 60% as per Rule 2A of Service Tax (Determination of Value) Rules, 2006 on the original works done by him. They submitted copies of bills issued by them along with appeal memorandum.
- Moreover the appellant's turnover after deducting 60% abatement comes to the below SSI exemption and hence the entire impugned order needs to be dropped. They submitted copy of Income Tax Return and Form 26AS along with appeal memorandum. In support of their above claim they relied upon the judgement of CESTAT in case of M/s. Shri Ashok Kumar Mishra reported at 2018 (2) TMI 573 - CESTAT, ALLAHABAD
- Even if it is assumed that the service provided by appellant is taxable, the appellant is eligible for the cum-tax benefit. The appellant has not charged and collected service tax on the amount charged from the service recipient. Therefore, under Section 67(2) of the Finance Act 1994, the appellant is eligible for the benefit of cum tax valuation. In support of their above claim they relied upon the below mentioned case laws:
 - a) M/s. Vaishali Developers & Builders reported at 2017 (47) S.T.R. 300 (Tri. - Del.)
 - b) M/s. Avtar Sodhi reported at 2016 (46) S.T.R. 547 (Tri. - Del.)
 - c) M/s. Hans Interiors reported as 2016 (44) S.T.R. 607 (Tri. - Chennai)
- The appellant submitted that in the FY 2015-16, they have not crossed amount of Rs.50 lakhs. Thus, according to Rule 6 of the Service Tax Rules, 1994, they were liable to pay Service Tax only when they had received the payment of services provided by them. Merely because an amount is specified in invoice did not made them liable to make payment of Service Tax.
- Entire proceedings vide the SCN has been initiated for the F.Y. 2015-16 only on the basis of data available from CBDT i.e. ITR/26AS of the appellant. As such, the contention of the adjudicating authority that every payment which is recorded in Form



26AS is service income and liable to tax, is baseless, erroneous and lacks merit. For the same the appellant relied upon the below mentioned cases:

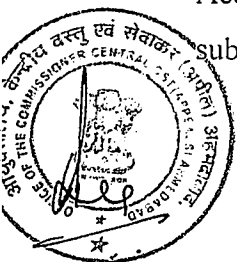
- a) M/s. Indus Motor Company reported at 2007 (8) TMI 89 -CESTAT, Bangalore
- b) M/s. Synergy Audio Visual Workshop Pvt. Ltd. reported at 2008 (1) TMI 188 - CESTAT Bangalore
- c) M/s. Kush Constructions reported at 2019 (5) TMI 1248 - CESTAT Allahabad
- d) M/s. Quest Engineers & Consultant Pvt. Ltd. reported at 2021(10)TMI 96-CESTAT Allahabad

- There is no element of fraud, willful mis-statement or suppression of facts with intent to evade payment of service tax, as all the income received by them were accounted for in the books of accounts. In the absence of the element of suppression, omission or commission or deliberate attempt to evade payment of Service tax cannot be alleged against them. In support, the appellant relied upon following decisions of various Courts:

- a) Pahwa Chemicals Private Ltd. vs. Commissioner - 2005 (189) E.L.T. 257 (S.C.)
- b) Hindustan Steel Ltd. vs. State of Orissa - 1978 (2) E.L.T. J 159 (S.C.)
- c) Padmini Products v. Collector of C. Ex.- 1989 (043) ELT 0195 (S.C.)

- The appellant is not liable to pay any service tax, hence, the question of paying interest under Section 75 of the Finance Act, 1994 does not arise.
- As no fraud, collusion, suppression or mis-declaration of facts or contravention of the law with intent to evade payment of duty can be attributed to the appellant, to attract the proviso to Section 73(1) of the said Act and therefore no penalty can be imposed on the appellant under Section 78 of the said Act
- This is a fit case for waive of penalty under Section 80 of the said Act as under Section 80 there is a discretion not to impose any penalty on "reasonable cause" being shown by the appellant. In the facts of the present case, the notices had presented sufficient material before the authority so as to be eligible to the benefit of Section 80 of the said Act.

4. Personal hearing in the case was held on 16.03.2023. Ms. Neelam Kalwani, Chartered Accountant, appeared on behalf of the appellant for personal hearing. She reiterated submissions made in appeal memorandum.



4.1 The appellant vide their letter dated 16.03.2023 submitted additional submission, wherein the appellant, inter alia, re-iterated the submission made by them in their appeal memorandum and submitted copy of ITR acknowledgement, Computation of Income and Form 26AS for the FY 2014-15.

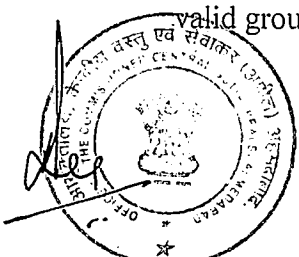
5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax 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 2015-16.

6. I find that in the SCN in question, the demand has been raised for the period FY 2015-16 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 valid ground for raising of demand of service tax.



7. I find that the adjudicating authority had confirmed the demand of Service Tax on the whole income of Rs. 14,98,098/- observing as under:

"16.3 In compliance of the Show Cause Notice dated 28.09.2020, I find that Ms. Neha P Kansodiya, Prop. of Neha Chauhan & Co., Chartered Accountants and authorized representative of the said notice vide letter dated 26.10.2020 submitted a only copies of an acknowledgement of Income Tax Returns & Form 26AS for FY 2015-16 and scanned copy Bank Statement for FY 2015-16. On verification of the documents provided it observed that, there is only acknowledgement of ITR for FY 2015-16, there was no computation of Income tax or Profit & loss account submitted. As per the details of 26AS of the said noticee for FY 2015-16, I find that, there was Total Amount paid/Credited Under 194C, as Rs.14,98,098/- which is matched with data provided as third party by the CBDT for the said noticee for FY 2015-16. Further, on going through the details of the Bank statement as provided, I noticed that, the copy of Bank statements scanned copy bank pass and for FY 2015-16 but there is no first page of the pass book and there is no account number and name of account holder and name of Bank is mentioned therefore it cannot be ascertained that, the said copy of bank pass book of the said noticee. Further, I find that, they vide said letter dated 26.10.2020 the authorized representative of the noticee has neither made any submission in defense of the allegation made in subject Show cause notice dated 28.09.2020 nor claimed of any exemptions nor submitted any documentary evidence in defense of the demand raised vide subject Show cause notice, Further, I find that, after issuance of the SCN, this office has given ample opportunities to the said notice by way of personal hearing to defend the subject case but the said Noticee has failed to avail the opportunities given for the sake of natural justice. In this scenario, I find that, the show cause notice is pending for more than one year for adjudication and keeping in view of the to reduce pendency of adjudication beyond one year, I proceed to decide the case ex-parte on the basis of evidence available on record."

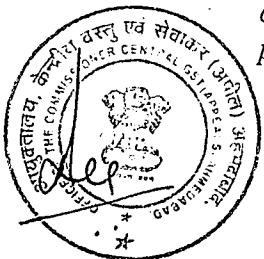
8. It is observed that the main contentions of the appellant are that (i) they have carried out Work Contract Services and eligible for abatement of 60% as per Rule 2A of Service Tax (Determination of Value) Rules, 2006; (ii) they are eligible for the cum-tax benefit as per Section 67(2) of the Finance Act 1994; and (iii) they were liable to pay Service Tax only when they had received the payment of services provided by them as per Rule 6 of the Service Tax Rules, 1994.

8.1 For ease of reference, I reproduce the relevant provision of Rule 2A(ii) of the Service Tax (Determination of Value) Rules, 2006, which reads as under:

"Rule 2A(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-

(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent of the total amount charged for the works contract;

(B) in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy percent of the total amount charged for the works contract;



(C) in case of other works contracts, not covered under sub-clauses (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property, service tax shall be payable on sixty per cent. of the total amount charged for the works contract;

Explanation 1. - For the purposes of this rule,-

(a) "original works" means-

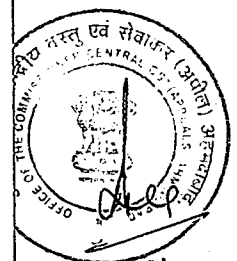
(i) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;"

8.2 However, I find that the appellant have at the stage of adjudication as well as before this authority, failed to demonstrate that they have carried out Work Contract Services with any supporting documents viz. work order / agreement / contract, etc. in support of their claim for abatement of 60% as per Rule 2A of Service Tax (Determination of Value) Rules, 2006. I also find that the appellant in their reply dated 26.10.2020 to the show cause notice categorically stated that they have filed their Income Tax Return under Section 44AD of the Income Tax Act, 1961 and they have not maintained regular books of account. I also find that the appellant have also not disputed that they have provided taxable services.

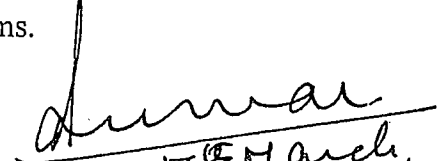
8.3 I also find that the appellant have submitted invoices issued by them during the FY 2015-16 along with appeal memorandum, which was not produced by them to the adjudicating authority during the adjudication process. I am of the considered view that the appellant cannot seek to establish their eligibility for cum tax benefit under Section 67(2) of the Finance Act, 1994 and eligibility for benefit of Rule 6 of the Service Tax Rules, 1994 to pay the service tax only when they received the payment of services provided by them at the appellate stage by bypassing 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. Considering the facts of the case as discussed hereinabove and in the interest of justice, I am of the considered view that the case is required to be remanded back to the adjudicating authority to consider the aforesaid claim of the appellant for cum tax benefit under Section 67(2) of the Finance Act, 1994 and eligibility for benefit of Rule 6 of the Service Tax Rules, 1994. The appellant is directed to submit all the records and documents in support of their claim 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.



9. Accordingly, I set aside the impugned order and allowed the appeal by way of remanding the case back to the adjudicating authority to decide the same afresh.


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

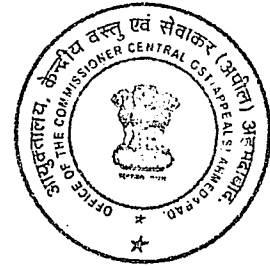
The appeal filed by the appellant stands disposed of in above terms.


.. 17 March, 2023..
(Akhilesh Kumar)
Commissioner (Appeals)

Attested

Date : 17.03.2023


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



By RPAD / SPEED POST

To,
M/s. Anupji Kamaji Thakor,
LIG-I/Q-1, 804, Gujarat Housing Board,
Village – Sanand,
Ahmedabad – 382110

Appellant

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

Respondent

Copy to :

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

(for uploading the OIA)

~~5) Guard File~~

6) PA file

