



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: 20221264SW0000444C65

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/852/2022-APPEAL / 5754-98
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-78/2022-23
दिनांक Date : 12-12-2022 जारी करने की तारीख Date of Issue 16.12.2022
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/193/MIRAJ/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 Miraj Chandravadan Yagnik,
94, Binori Bunglows,
Aarohi Club Road, Ghuma,
Ahmedabad-380058

2. Respondent

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

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

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

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

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

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

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया 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 अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

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

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

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

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

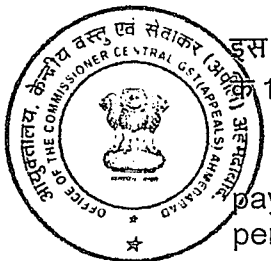
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

The present appeal has been filed by M/s. Miraj Chandravadan Yagnik, 94, Binori Bunglows, Aarohi Club Road, Ghuma, Ahmedabad – 380058 (hereinafter referred to as “the appellant”) against Order-in-Original No.GST-06//D-VI/O&A/193/Miraj/AM/2021-22 dated 31.03.2022 (hereinafter referred to as “the impugned order”) passed by the Assistant Commissioner, Central GST, Division VI, Ahmedabad North (hereinafter referred to as “the adjudicating authority”).

2. Briefly stated, the facts of the case are that the appellant is holding PAN No. AALPY9511F. On scrutiny of the data received from CBDT for the Financial Year 2014-15, it was noticed that the appellant had earned an income of Rs. 10,57,473/- during the FY 2014-15, which was reflected under the heads “Sales / Gross Receipts from Services (Value from ITR)” by the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but has neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant was called upon to submit copies of Balance Sheet, Profit & Loss Accounts, Income Tax Returns, Form 26AS, for the said period, however, the appellant had not responded to the letters issued by the department.

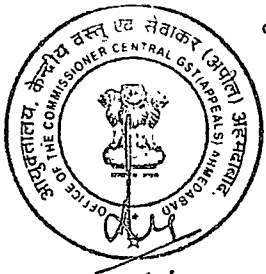
2.1 Subsequently, the appellant was issued a Show Cause Notice No. CGST-06/04-635/O&A/Miraj/2020-21 dated 28.09.2020 demanding Service Tax amounting to Rs. 1,30,703/- for the period FY 2014-15, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; recovery of late fees under Rule 7C of the Service Tax Rules, 1994; and imposition of penalties under Section 76, Section 77 & Section 78 of the Finance Act, 1994. The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority and the demand of Service Tax amounting to Rs. 1,30,703/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2014-15. Further (i) Penalty of Rs. 1,30,703/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(a) of the Finance Act, 1994 for failure to taking Service Tax Registration; and (iii) Penalty of Rs. 40,000/- was imposed on the appellant under Section 70(1) of the Finance Act, 1994 for not furnishing service tax returns.

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

- The appellant had provided consulting engineer’s service during FY 2014-15 and had not taken service tax registration based on bonafide belief that no Service Tax was payable by them as his entire value of services were exempted under Notification No. 33/2012-ST and Notification No. 25/2012-ST [Sr. No. 25(1)] during the relevant period.



- The appellant had received a fee of Rs. 77,106/- towards consultancy for Dental College, Khokhra provided to Ahmedabad Municipal Corporation, Ahmedabad, which is a local authority through L. J. Purani and Associates on or before 30.06.2014.
- They submitted a Note dated 11.06.2014 issued by Ashok Chhajed & Associates, Chartered Accountants, as Pre-Audit recommendation to the effect that the Ahmedabad Municipal Corporation is a local authority and the work executed by the appellant is related to clause 25(1) of Notification No. 25/2012-ST, hence Service Tax shall not be charged in the bill. In view of the same, the appellant were of the bonafide belief that they were not liable to pay any Service Tax on the service value of Rs. 77,106/- provided to local authority for which payment was received through L. J. Purani and associates.
- Their aggregate value of taxable services rendered in preceding financial year i.e. FY 2013-14 was Rs. 4.65.000/- and thus, it did not exceed Rs. 10 lakhs. Hence, the appellant was eligible to avail exemption upto Rs. 10 lakhs in the FY 2014-15 under Notification No. 33/2012-ST. Their gross consulting income for the FY 2014-15 was Rs. 10,57,473/- and value of exempted consulting income was Rs. 77,106/- as mentioned above. Thus, the remaining taxable value of service for the FY 2014-15 was Rs. 9,80,367/- and is exempted under Notification No. 33/2012-ST.
- The impugned order has denied exemption in respect of Rs. 77,106/- by presuming that the same is not eligible under Sr. No. 12 of Notification No. 25/2012-ST despite the fact that as per Pre-Audit recommendation dated 11.06.2014 from CA, it was categorically stated therein that the exemption is under Sr. No. 25(a) of Notification No. 25/2012-ST.
- The impugned order has confirmed Service Tax liability based on Gross receipt from Services based on Income Tax Return (ITR). In this regard, the appellant relied on the judgement of Hon'ble Tribunal in case of Kush Constructions Vs. CGST NACIN [2009 (24) GSTL 606 (Tri. All.)] in which it was held that Revenue cannot raise the demand on the basis of difference in figures reflected in ST-3 returns and Form 26AS without examining the reasons for the 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 service 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.
- When the demand of Service Tax itself is not sustainable, ordering recovery of interest under Section 75 of the Finance Act, 1994 also not sustainable.
- They have not charged or recovered any Service Tax, hence, the value should be treated as inclusive of Service Tax, which was not done in the impugned order and the same is



issued without applying correct value in terms of provisions of Section 67(2) of the Finance Act, 1994. In this regard, they relied on the judgements of Godfrey Phillips India Ltd. Vs. CCE [2018 (10) GSTL (Tri. Mum.)]

- o The demand of Service Tax under the SCN for period FY 2014-15 is time barred as the SCN dated 28.09.2020 is issued and served on 04.10.2020 after a normal limitation period of 30 months. The appellant is an individual and small service provider, who is not an expert in service tax law. He has shown all the transactions in its books of account and income tax records and nothing has been suppressed. He had relied on advise of CA who had informed that service provided to local authority is fully exempt from levy of service tax under SI. No. 25(a) of Notification No. 25/2012-ST and in addition to that services upto value of Rs. 10 lakhs are fully exempt under Notification No. 33/2012-5T for FY 2014-15 as the value of service provided during FY 2013-14 did not exceed Rs. 10 lakhs. Nothing has been deliberately suppressed by the appellant and impugned order has also not been able to show any evidence of deliberate violation of any provisions of Finance Act, 1994 or the rules made thereunder with intent to evade payment of service tax. Hence, relying on following decisions, the appellant prays to hold that extended period of limitation cannot be invoked in this case and hence the demand is not sustainable on the ground of limitation also.

- a. Monarch Catalyst Pvt. Ltd. v. CCE [2016 (41) STR 904 (Tri.-Mum.)]
- b. Tamilnadu Housing Board v. CCE - 1994 (74) ELT 9 (SC)
- c. Collector v. Chemphar Drugs - 1989 (40) ELT 276 (SC)
- d. General Security & Information Service v. CST [2021 (52) GSTL 598 (Tri.-Kol.)]
- e. Ace Creative Learning Pvt. Ltd. [2021 (51) GSTL 393 (Tri.-Bang.)]
- f. Reetika Cable v. CGST [2021 (53) GSTL 261 (Tri.-Chan.)]

- o The appellant was of the bonafide belief that he is not liable to pay any service tax for the year 2014-15 in view of exemptions under Notification No. 25/2012-ST and 33/2012-ST. Since, in this case, this appellant is not liable to pay any service tax, he respectfully submits to set aside the impugned order that imposes savage penalties on small service provider without there being any evasion of tax on his part. The appellant submitted that there is no failure to correctly assess the service tax liability or failure to file correct ST-3 return on the part of the appellant as the appellant is of bona fide belief that he was not liable to pay any service tax for FY 2014-15 and there is no intent to evade service tax on his part. These facts show that there was a reasonable cause on part of this appellant to entertain the view that he is not liable to pay service tax.

- i. Pahwa Chemicals P. Ltd. v. CCE, Delhi [2005 (189) ELT 257 (S.C.)]
- ii. Orient Packaging Ltd. v. CCE [2011 (23) STR 167 (Tri.-Del.)]
- iii. Cement Marketing Co. - 1980 (6) ELT 295 (SC)
- CC v. Seth Enterprises [1990(49) ELT 619 (Tri. Del.)]



v. Neon News Pvt. Ltd. V. CCE [2019 (26) G.S.T.L. 241 (Tri. - All.)]

- o On the basis of above grounds, the appellants requested that the impugned order confirming demand of service tax, interest thereon and imposing penalties be quashed and set aside.

4. Personal hearing in the case was held on 02.12.2022. Shri Nilesh V. Suchak, Chartered Accountant and Shri Nandesh Barai, Chartered Accountant, appeared on behalf of the appellant for personal hearing. They submitted a written submission during hearing and reiterated submissions made therein. They also reiterated submission made in appeal memorandum.

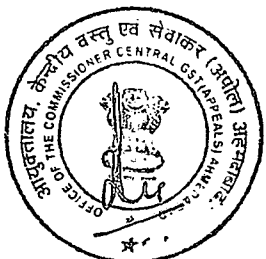
4.1 In their additional written submission made during the course of personal hearing, the appellant, inter alia, reiterated the grounds / arguments put forth by them in appeal memorandum.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The main issue to be decided in the present case is whether the impugned order confirming the demand of Service Tax of Rs. 1,30,703/- for the FY 2014-15 along with interest and penalty is legal, proper and correct or otherwise.

6. I find that in the SCN in question, the demand has been raised for the period FY 2014-15 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services under Sales / Gross Receipts from Services" provided by the Income Tax Department, no other cogent reason or justification is forthcoming from the SCN for raising the demand against the appellant. It is also not specified as to under which category of service, the non-levy of service tax is alleged against the appellant. Merely because the appellant had reported receipts from services, the same cannot form the basis for arriving at the conclusion that the respondent was liable to pay service tax, which was not paid by them. In this regard, I find that CBEC had, vide Instruction dated 26.10.2021, directed that:

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

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



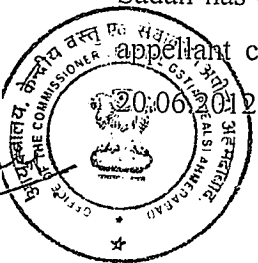
6.1 In the present case, I find that letters were issued to the appellant seeking details and documents, which were allegedly not submitted by them. However, without any further inquiry or investigation, the SCN has been issued only on the basis of details received from the Income Tax department, without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

7. As regards the merits of the case, I find that the main contention of the appellant is that they had received a fee of Rs. 77,106/- towards consultancy for Dental College, Khokhra and the said service was provided by them to Ahmedabad Municipal Corporation, Ahmedabad, which is a local authority, through L. J. Purani and Associates on or before 30.06.2014 and the said service is exempted from Service Tax vide Sr. No. 25(a) of the Notification No. 25/2012-ST dated 20.06.2012. In this regard, I find that the adjudicating authority has in the impugned order discussed about the said amount received by the appellant and also discussed the applicability of the exemption under Notification No. 25/2012-ST. However, I find that the adjudicating authority denied the exemption under said notification with reference to Sr. No. 12(a) of the said notification and not given any findings with regard to Sr. No. 25(a), as contended by the appellant. I find that the amount of Rs. 77,106/- was received by the appellant on or before 30.06.2014, and the Sr. No. 25(a) of the Notification No. 25/2012-ST dated 20.06.2012 stood at the relevant time reads as under:

"25. Services provided to Government, a local authority or a governmental authority by way of -

(a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or"

7.1 I find that the services provided by the appellant i.e. Consultancy for Construction of Building for Dental College, Khokhra, is no where related to services for carrying out any activity in relation to any function ordinarily entrusted to a municipality. Thus, I find that the Consulting Engineer Service provided by the appellant for Construction of Building for Dental College to Ahmedabad Municipal Corporation, as sub-contractor, are not exempted under Sr. No. 25(a) of the Notification No. 25/2012-ST dated 20.06.2012. I also find that the appellant provided Consulting Engineer Service to M/s. L. J. Purani and Associates as sub-contractor and not directly to the Ahmedabad Municipal Corporation. I also find that the adjudicating authority has in Para 29.2 & 29.3 of the impugned order discussed about the Work Order dated 09.04.2013 issued by the Mahanagar Seva Sadan (Ahmedabad Municipal Corporation) and found that while awarding the work order for the Project Management Consultant Service, the Mahanagar Seva Sadan has quoted the requirement of Service Tax also. Hence, I find that the contention of the appellant claiming exemption under Sr. No. 25(a) of the Notification No. 25/2012-ST dated 20.06.2012 is not legally sustainable and is rejected accordingly.

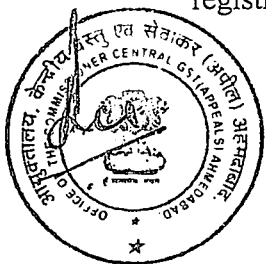


8. I also find that the appellant has not disputed the taxability for the remaining amount of Rs. 9,80,367/-. They have only contended that the said amount is exempted under Notification No. 33/2012-ST. In this regard, I find that gross income of the appellant for the FY 2014-15 was Rs. 10,57,473/- and as the total taxable value of the appellant in the preceding financial year i.e. FY 2013-14 was Rs. 4,65,000/- which is below Rs. 10,00,000/-, as evident from the P&L account and Income Tax Return for the FY 2013-14 submitted by the appellant with the appeal memorandum. Hence, I find that they are eligible for the benefit of exemption up to Rs. 10,00,000/- as per Notification No. 33/2012-ST dated 20.06.2012 in the FY 2014-15, which was not extended to the appellant in the impugned order.

9. I also find that the appellant have also contended that the demand is barred by limitation. In this regard, I find that the demand pertains to the period F.Y. 2014- 15 and even by invoking the extended period of limitation, the SCN could have been issued by 25.10.2019 for demanding service tax for the first half of FY 2014-15. However, the SCN has been issued on 28.09.2020. Therefore, the demand in respect of the period from April, 2014 to September, 2014 is barred by limitation. Further, I also find that the adjudicating authority has not taken into consideration the issue of time bar and confirmed the demand in toto. In my considered view, the demand for the period from April, 2014 to September, 2014 is barred by limitation.

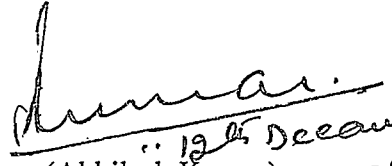
10. I also find that the appellant contended that they have not charged and collected the Service Tax from their customers and therefore they are eligible for cum-tax-value for the FY 2014-15. However, I find that the appellant did not produce any evidence to indicate that the gross amount charged by them is inclusive of service tax payable. Hence, it cannot be concluded that the gross amount is inclusive of service tax when no reference has been made to the service tax in the basic documents for realising the consideration.

11. In view of the above discussion, I uphold the impugned order passed by the adjudicating authority treating the income earned by the appellant during FY 2014-15 amounting to Rs. 10,57,473/- as taxable service for providing Consultancy Engineering Service. The appellant are eligible for benefit of threshold exemption upto Rs. 10,00,000/- in terms of Notification No. 33/2012-ST dated 20.06.2012. Further, the demand for the period April, 2014 to September-2014 is held to be time barred. The remaining demand for the period October-2014 to March-2015 needs to be quantified accordingly along with interest. Penalty under Section 78 of the Finance Act, 1994 is also required to be quantified in accordance with demand confirmed under Section 73(1) of the Finance Act, 1994. As regard the Penalty under Section 70(1) of the Finance Act, 1994, when the SCN for the first half of FY 2014-15 is not sustainable on limitation, the penalty for the non filing of ST-3 return for the said period is also not sustainable on this count. Therefore, I reduce the penalty to Rs. 20,000/- under Section 70(1) of the Finance Act, 1994. I also uphold the penalty of Rs. 10,000/- imposed upon the appellant for failure to taking registration under Section 77(1)(a) of the Finance Act, 1994.




12. 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.


12th Dec 2022
(Akhilesh Kumar)
Commissioner (Appeals)

Attested


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

Date : 12.12.2022



By RPAD / SPEED POST

To,

M/s. Miraj Chandravadan Yagnik,
94, BinoriBunglows,
Aarohi Club Road, Ghuma,
Ahmedabad – 380058

Appellant

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

Respondent

Copy to :

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

- ~~5) Guard File~~
- 6) PA file