



सत्यमेव जयते

आयुक्त का कार्यालय),अपीलस(
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate-
Ahmedabad



जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.

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क फाइल संख्या : File No : GAPPL/COM/STP/1099/2020-Appeal-O/o Commr-CGST-Appl-Ahmedabad

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-25/2021-22**
दिनांक Date : **11.10.2021** जारी करने की तारीख Date of Issue : **27.10.2021**

आयुक्त (अपील) द्वारा पारित

Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)

ग Arising out of Order-in-Original Nos. **14/ADC/2020-21/MLM dated 04.09.2020**, passed by the
Additional Commissioner, Central GST & Central Excise, Ahmedabad-North.

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

Appellant- M/s. Lubi Industries LLP, Naroda Road, Nr. Kalyan Mills, Ahmedabad-380025.

Respondent- Additional Commissioner, Central GST & Central Excise, Ahmedabad-North.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिती 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 के 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 प्रक्रिया 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।

(E) 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 दिनोंक 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 टौआर-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.

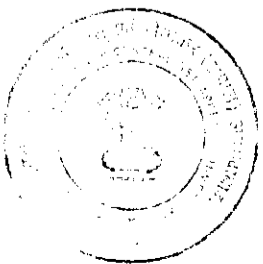
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(c) 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 पढ़ी 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 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 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.

- (6) 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।

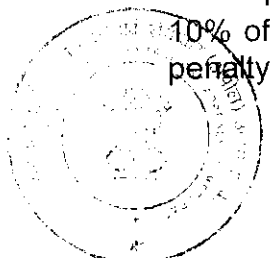
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



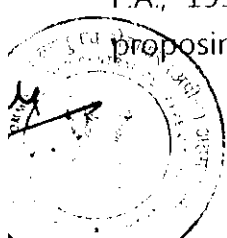
ORDER IN APPEAL

This appeal has been filed by M/s. Lubi Industries LLP, Naroda Road, Near Kalyan Mills, Ahmedabad-380025 (in short '*appellant*') against the OIO No: 14/ADC/2020-21/MLM dated 04.09.2020 (in short '*impugned order*') passed by the Additional Commissioner, Central GST, Ahmedabad North (in short '*the adjudicating authority*').

2. The facts of the case, in brief, are that during the course of audit conducted on the records of appellant by the officers of Central GST Audit, Ahmedabad, on verification of financial records of the appellant for the F.Y. 2014-15 to F.Y. 2017-18 (upto June, 2017), it was noticed that they had incurred expenses towards works contract service received for construction of new building at their various units, which was in the nature of original work. On detailed scrutiny of the documents provided by the appellant and on reconciliation of the expenses incurred against works contract service (original work) as shown in their financial records vis-a-vis the value shown in ST-3 returns, it was noticed that they had short paid service tax to the tune of Rs.5,80,883/-. Further, it was also noticed that for the same period, the appellant had also incurred expenses towards Electrical Installation, Repair & Maintenance (R&M) of Building, R&M Electrical work and R&M others, carried out at their various units under works contract service (other than original work), but failed to pay service tax amount of Rs.78,46,650/-.

3. Audit observed that amount charged for supply of material for construction of new buildings for execution of original work and the amount charged for services like providing electrical installation work, repair & maintenance of electrical work, repair & maintenance of building and other miscellaneous repair & maintenance work, done at various units of the appellant under works contract service for execution of work other than original work, would attract the provisions of Section 68(2) and Section 67 of the Finance Act (F.A) 1994 read with Rule 2A(ii)(A) of the Service tax (Determination of Value) Rules, 2006. The appellant being a Limited Company and service recipient were liable to pay 50% service tax on 40% of the amount charged for works contract (original work) and 50% service tax on 70% of the amount charges in respect of works contract (other than original work), under Reverse Charge Mechanism (RCM).

4. Based on audit observations, a Show Cause Notice (SCN for brevity) No:VI/1(b)CTA/Tech-38/SCN/Lubi Ind/2019-20 dated 14.10.2019, was issued to the appellant invoking extended period and proposing to consider 40% of the total amount of Rs.1,11,33,651/- paid to various service providers during the period April, 2014 to June, 2017, as taxable value under Works Contract (original work) and 70 % of the total amount of Rs.15,86,71,749/- paid to various service providers towards the Electrical Installation, R&M of Building, R&M Electrical work and R&M others, carried out at their various units as taxable value under Works contract (other than original work), u/s 67 of the Finance Act (F.A) 1994 read with Rule 2A(ii)(A) of the Service tax (Determination of Value) Rules, 2006; proposing recovery of unpaid service tax amounting to **Rs.5,80,883/-** against works contract service for original work and **Rs.78,46,650/-** against works contract service for other than original work, totaling to **Rs.84,27,533/-** under proviso to Section 73(1) of the Finance Act, 1994 read with Section 68(2) of the F.A., 1994 & Notification No. 30/2012 dated 20.06.2021 as amended, under RCM; proposing recovery of interest under Section 75 of the Act ibid on the total amount &

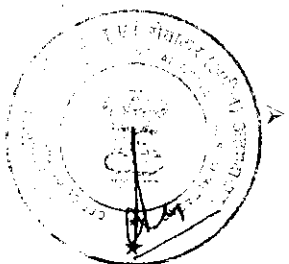


imposition of penalty u/s 78(1) for suppressing the value of taxable service with intent to evade payment of service tax, was also proposed.

5. The said SCN was adjudicated by the adjudicating authority vide the impugned order, wherein he ordered to consider 40% of the amount of Rs.1,11,33,651/- paid to various service providers towards the building additional work (original work) as taxable value under Works Contract (original work) and 70% of the total amount of Rs.15,86,71,749/- paid to various service providers towards Electrical Installation, R&M of Building, R&M Electrical work and R&M others, as taxable value under Works contract (other than original work) done; during the period April, 2014 to June, 2017. He also confirmed service tax demand of **Rs.5,80,883/-** against works contract service for original work and service tax of **Rs.78,46,650/-** against works contract service other than original work (*totaling to Rs.84,27,533/-*) to be recovered alongwith interest; and also imposed equivalent penalty of **Rs.84,27,533/-** u/s 78(1) on the appellant.

6. Aggrieved with the impugned order, the appellant preferred the present appeal, primarily on following grounds:

- The services provided by M/s. Salish Kumar, M/s. Jhanvi Engg. & Construction, M/s. Vijaykumar T.Yadav, M/s. Khetheswar Traders etc was not in the nature of works contract service as there was no transfer of property in goods involved in execution of the works by these contractors.
 - Written contracts were not submitted before the adjudicating authorities as no written contracts were entered with these service providers, hence not provided. However, copies of all bills & invoices have been submitted during adjudication and with the present appeal also.
 - The value of the taxable service has been arrived on the basis of the figures and value of the assets & properties shown in the financial records. However, details of F.Y. 2015-16 was excluded as comparison of financial records & service tax paid as shown in ST-3 returns, would show a negative picture which clearly indicate that such comparison are incorrect as value of taxable service could never be negative.
 - They also produced copy of Chartered Accountant's certificate certifying that the appellant has paid service tax on the value of the services rendered by M/s. Jhanvi Engineers & Construction for the bills issued during 2014-15 to June, 2017 after permissible abatement, therefore demand of Rs.5,80,883/- is not sustainable.
 - The demand of Rs.78,46,650/- was arrived by taking the figures & amounts shown in the financial records under head 'R&M'. All the R&M expenses shown in the financial records were not for works contract service. Expenses incurred by agencies like M/s. Vikram A. Prajapati, M/s. Bharati Electricals, M/s. Famous Industries, M/s. Manu R.Sharma etc cannot be considered as they are labour contractors, iron & steel fabricators. Had the bills of these agencies been examined, then it would have been clear that all the expenses incurred under R&M were not for work contract as transfer of goods is not involved, hence demand of Rs.78,46,650/- is also not sustainable.
- As there is no short/non levy or short/non-payment; interest cannot be demanded.



- All payments were reflected in the book of accounts and records hence intent to evade payment of service tax not established therefore, mandatory penalty u/section 78 is not applicable. 2002(161)ELT 346; 2004(178)ELT 998; 2005 (185) ELT 421.

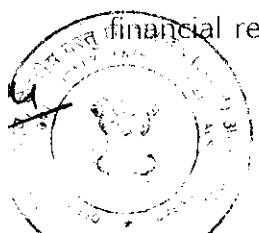
7. Personal hearing in the matter was held on 27.08.2021 through virtual mode. Shri Amal P.Dave, Advocate and Shri Sudhanshu Bissa, Advocate, appeared on behalf of the appellant and reiterated the submissions made in the appeal memorandum.

8. I have carefully gone through the facts and circumstances of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as at the time of personal hearing and evidences available on records. The major issues to be decided under the present appeal are as under;

- a) Whether the amount of Rs.1,11,33,651/- paid to various service provider towards building additional work during the period April, 2014 to June,2017, should be considered taxable under Works Contract Service (original work) and whether appellant is liable to pay service tax of Rs.5,80,883/- under said service;
- b) Whether the amount of Rs.15,86,71,749/- paid to various service providers towards Electrical Installation, R&M of Building, R&M Electrical work and R&M others, during the period April, 2014 to June,2017, should be considered taxable value under Works contract (other than original work) and whether appellant is liable to pay service tax of Rs.78,46,650/- under said service;

9. The adjudicating authority upheld the demand and liability of the appellant to pay Rs.5,80,883/- and Rs.78,46,650/- predominantly on the ground that the appellant could not produce any Chartered Engineer or Chartered Accountant certificate to establish that there was no transfer of property in goods involved in execution of the work. As the appellant could not substantiate their claim through documentary evidences, therefore considering the documents made available to the audit, the nature of service received, financial transactions and description of services mentioned in the invoices, he upheld the demands considering the services received under works contract service.

10. The appellant alongwith their appeal memorandum have produced copy of invoices to establish that the service received was exclusively Repair & Maintenance service; invoices issued by M/s Bharati Engineering, M/s. Satish Kumar, M/s. Vijaykumar T.Yadav, M/s. Khetheswar Traders etc were produced to support their claim that the services rendered were not in nature of works contract; invoices issued by M/s. Jhanvi Engineers & Construction were produced in support of their argument that the service tax has been paid after permissible abatement, they also produced copy of certificate issued by Chartered Accountant Jhaveri Shah & Co. certifying that the payments made/ expenses incurred by the appellant for the F.Y. 2014-15, 2015-16, 2016-17 were towards works contracts pertaining to work related to addition to building, bifurcated into material, services etc; that for each item in respect of which payment/expenses made have been verified. Appellant strongly contended that the value of the taxable service arrived on the basis of the figures and value of the assets & properties shown in the financial records cannot be correct comparison since all the expenses incurred are not



under work contract service hence demand arrived is incorrect and unsustainable. They also claim that all the bills and invoices of such contractors were also submitted to the adjudicating authority but were not analyzed while deciding the case.

11. On examining the invoices and certificates, I find merit in appellant's argument. The appellants have claimed that they had produced all relevant bills and invoices to the adjudicating authority to corroborate their claim that the services received were not works contract as there was no transfer of property in any goods involved. The adjudicating authority however held that the appellant were not able to substantiate their claim through documentary evidence. Considering the fact that, these invoices and certificates were not produced before the adjudicating authority hence were not examined, therefore verification of these documents submitted by the appellant in appeal proceeding is required to ascertain correct factual position in the case and merits in the contentions of the appellant for which, I find that the matter needs to be remanded for carrying out necessary verification.

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

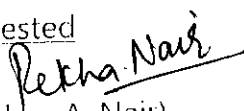
13. In view of above discussion, I find that the impugned order passed by the adjudicating authority needs to be remanded back to him for verification of the documents and verify the claim of the appellant and subsequently determine the tax liability.

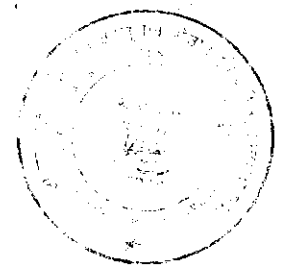
14. Accordingly, the impugned order is set-aside and appeal filed by the appellant is allowed by way of remand to the original adjudicating authority for decision of the case afresh.

15. 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.


(Akhilesh Kumar)
Commissioner(Appeals)

Date: 10.2021

Attested

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



By RPAD/SPEED POST

To,
M/s. Lubi Industries I.P.,
Naroda Road, Nr. Kalyan Mills,
Ahmedabad-380025

-- (Appellant)

(Respondent)

The Additional Commissioner,
CGST, Ahmedabad North
Ahmedabad-380009

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. Guard File.
5. P.A. File

