



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: 20230964SW00000530AF

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/251/2023-APPEAL / 6245-50
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-107/2023-24
 दिनांक Date : 22-09-2023 जारी करने की तारीख Date of Issue 22.09.2023
 आयुक्त (अपील) द्वारा पारित
 Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 17/ADC/MR/2022-23 दिनांक: 31.05.2022 , issued by
 The Additional Commissioner, CGST, Ahmedabad North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s. Construction & Design services, sector ET-19/33, C&DS Unit 41, Sterling City, Near Water Tank, Ahmedabad, Gujarat-380058

2. Respondent

The Additional Commissioner, CGST, Ahmedabad North, 1st Floor, Custom House, Navrangpura, Ahmedabad-380009

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

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

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

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

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

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

(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(Appel) 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.

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

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

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

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

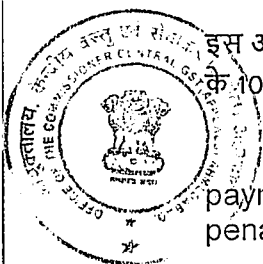
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

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

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

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

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



ORDER-IN-APPEAL

M/s. Construction & Design Services, Sector ET-19/33, C&DS Unit 41, Sterling City Near Water Tank, Ahmedabad-380058 (hereinafter referred to as "the appellant") have filed the present appeal against Order-in-Original No. 17/ADC/MR/2022-23 dated 31.05.2022 (hereinafter referred to as "the impugned order") passed by the Additional Commissioner, Central GST, Ahmedabad North (hereinafter referred to as "the adjudicating authority"). The appellant were holding Service Tax Registration No.AAALU0256CSD052 had provided Works Contract Service.

2. The facts of the case in brief are that the DGCEI LZU, Lucknow had initiated investigation against M/s. Construction & Design Services (a part of UP Jal Nigam) for non-payment of service tax on construction services/ work contract services provided by them to Government. Exemption on construction services provided to the Government was withdrawn vide Notification No. 06/2015-ST read with Notification No. 09/2016-ST. Various units of M/s Construction and Design Services were found not paying Service Tax on construction services provided to government in government agencies. During investigation by DGCA Lucknow Zonal Unit, Lucknow, it has been observed that there were total 53 registered units which are located in various City/ towns in the state of Uttar Pradesh as well as other states. Therefore, DGCEI, Lucknow Zonal Unit vide letter No. DGCEI/LZU.INV/Gr.F/19/2016 Dtd.08.06.2018 intimated various formations and one of units of (M/s Construction and Design Services) was the appellant unit which falls under the jurisdiction of the CGST Ahmedabad North Commissionerate having Service Tax Registration No.AAALU0256CSD052. Therefore, an inquiry was initiated in respect of wrong benefit of exemption Notification No.25/2012-ST dated 12.06.2012. Summons were issued and in response to the summons, the Project Manager of the appellant has submitted some copies of letters issued by Navodaya Vidyalaya Samiti (NVS), Noida to The General Manager, N-9, C&DS, UP Jal Nigam, WP-21 Sector-71, Noida regarding Administrative Approval and Expenditure Sanction by NVS. The appellant also submitted details of amount received for the services provided by them, vide their letter dated 22.02.2021. However, it was noticed that some of the works contract services, as detailed in Tabel-1 below provided did not fulfill the conditions as provided in the exemption notification as the agreement was not finalized before 01.03.2015 as per the conditions in Entry Sr. no. 12(A).

Table-1

Sr.No.	Project Name & Circle		G.O. No./ Shansades No/Letter No.	Funds received details					
				April, 2015 to March 2016		April, 2016 to March 2017		April, 2017 to June 2017	
				Date	Amount (in lac)	Date	Amount (in lac)	Date	Amount (in lac)
1	Construction of Boundary Wall at JNV Ahmedabad (Gujarat)	4111 674	F.2-40(37)/2007-NVS(W)dated 29.5.2015	09.09.2015	34.36				
				26.11.201	63.54				



				5.				
				09.3.2016	20.44			
			TOTAL		118.67			
	Re- constructio n of Boundary at JNV Amreli (Gujarat)	4112 426	F.2- 40(25)/07 NVS/(M& R)/P/date d 29.6.2016			05.1.2017	20	
						08.02.2017	130.09	
						15.02.2017	73.64	
			TOTAL				223.73	
3	Additional work at JVV Amreli (Gujarat)	4112 427	F.2- 40(25)/07 - NVS(W) dated 29.6.2016			05.01.2017	16.07	11.04.2017 9.27
			TOTAL				16.07	9.27
4	Constructio n Phase-A at JNV Ahmedabad (Gujarat)	4107 767	F.2- 40(37)/20 07- NVS(W) Ph-A/183 dated 27.10.201 6			05.01.2017	16.07	04.04.2017 367.27
			TOTAL				29.6.2017	470.78
			GRAND TOTAL				16.07	838.05
							118.67	255.87 847.32

2.1 It appeared that the agreement / GO / Shashnadesh for "Construction of Boundary Wall at JNV Ahmedabad (Gujarat)", "Re-Construction of Boundary Wall at JNV Amreli (Gujarat)", "Additional work at JNV Amreli (Gujarat)", "Construction Phase-A at JNV Ahmedabad (Gujarat)" has been executed on 29.05.2015, 29.06.2016, 29.06.2016 and 27.10.2016 respectively. As the condition of Entry no.12 A of Notification 25/2012 dated 12.06.2012 is not fulfilled it was therefore observed that the appellant is not eligible to avail the benefit of exemption under Sr. 12A of Notification No. (a), (c) and (f) as was withdrawn w.e.f. 01.04.2015 vide Notification No. 06/2015-ST dated 01.03.2015 and further vide Notification No. 09/2016-ST dated 01.03.2016, a new entry 12A was introduced wherein the benefit of the exemption was made available to the contracts which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable; had been paid prior to such date. It was observed that the above contracts were carried out after 01.03.2015 hence it appeared that the appellant was not liable for exemption under above notification. Therefore, in terms of Rule 2A (ii) (A) & (B) of the Service Tax (Determination of Value) Rules, 2006, the valuation of works contract/construction services rendered by the appellant was done by considering abatement of 70% and 40% respectively.

Table-2

Period	Gross Value	Reverse calculated taxable value	S.T. liability
2015-16	11867000	11216446	650554
2016-17 @70 % for	22373000	20247059	2125941



Repair service			
2016-17 @40%	1607000	1516038	90962
April to June, 2017	84732000	79935849	4796151
	12,05,79,000	11,29,15,392	76,63,608

3. A Show Cause Notice (SCN) No. IV/17-11/CDS/PI/2018-19 dated 24.03.2021 was, therefore, issued to the appellant proposing recovery of service tax amount of Rs.76,63,608/- along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 76, Section 77(1)(b), 77(1)(c), 77(1) (d) & 77(1) (e) and Section 77(2) as well as penalty under Section 78 of the Finance Act, 1994 were also proposed.

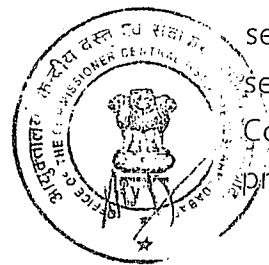
4. The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.76,63,608/- was confirmed alongwith interest. Penalty u/s 76 was dropped. However, penalty of Rs.10,000/- each under Section 77 (1) & under Section 77(2) was imposed alongwith penalty of Rs.76,63,608/- under Section 78 of the F.A., 1994.

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

- The adjudicating authority had not considered the exemptions available to the Governmental Authority/ Local Authority stated at Entry No.12/13/14/25/39/54 of Notification No 25/2012 Dated 20-06-2012 as the services are provided by appellant to Government against Govt GO's. Therefore, the tables stated above are wrong and not correct.
- UP Jal Nigam has been constituted in 1975 as Uttar Pradesh Jal Nigam through Uttar Pradesh Water Supply and Sewerage Act, 1975 and thus, UP Jal Nigam including C&DS is covered in the category of Governmental Authority and engaged mainly in water supply and other public utility services and also Local Authority as its Service Tax Registration is based on PAN No which is AAALU0256CS, where "L" denotes the Local Authority. Project Manager Unit-41, C. &D.S., U.P. Jal Nigam (U)
- Unit 41, C&DS, UP Jal Nigam is the Governmental /Local Authority receive funds between for the category of Works Contract Services but the "Funds" issued by Govt. GO'S (called as Shashanadesh) for construction of a structure through which Govt social welfare schemes and public necessary amenities are created. The appellant is providing construction related services in Govt Projects as per Govt GO'S which falls in the category of works contract services and such works are exempted from the purview of service tax vide Sr. No. 12/13/14/25/39/54 etc of Notification No. 25/2015 dated 20.06.2012. We are governmental/ Local Authority and since we are not liable for service tax so there is no intention to willfully and deliberately evading submission of the said requisite information/reply etc. and also there no questions of evading the tax liabilities.



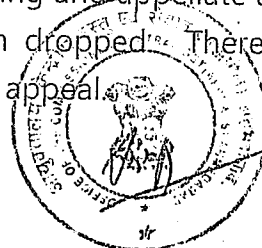
- All the GO's were issued for total cost which includes the supply of material and supply of goods, and thus, the services rendered against these Govt GO's are always works contract services which are exempted in service tax by vide SI No. 12/13/14/25/39/54 etc of notification no. 25/2015 dated 20.06.2012. The appellant was registered with the Service Tax Department for payment of Service Tax under the category of Works Contract Service. They had already made the payment of service tax, at applicable rate and in fact they had also made the payments of service tax under protest on services which are non taxable in nature. The funds received for works contract services for public utility services were non-taxable in service tax laws. Funds were given for the purpose of Construction serviced in Govt. Projects as per the Govt G's norms and thus ultimately work contract services are provided to the Govt.
- The C&DS, UP Jal Nigam is also a Local Authority as indicated by its PAN NO and UP Jal Nigam has been constituted in 1975 as Uttar Pradesh Jal Nigam through Uttar Pradesh Water Supply and -Project Manager - Unit-41, C. & D.S., U.P. Jal Nigam (u) Sewerage Act, 1975 and thus, UP Jal Nigam including C&DS is covered in the definition of Governmental Authority when engaged in providing services of water supply and other public utility services and when provide other statutory functions, it is also local authority and the same is stated in its Service Tax Registration which is based on PAN No which is AAALU0256C, where "L" denotes the Local Authority. Copy of constitution of UP Jal Nigam is submitted.
- All the construction works as per Govt GO's are for total cost which includes both cost of material and cost of labour and thus, the services of appellant are covered in category of works contract services. These works contract service are provided against Govt GO's /Sasnadesh. Thus, all the works contract services provided by the appellant to Govt Deptt are always exempted in service tax and therefore, the question of tax liabilities on the appellant does not arise in this OIO.
- All the works contract Services provided by appellant to Govt deptt are covered in the category of "works contract services provided by Local Authority to Govt vide the Govt GO's/ Sasnadesh which are other than services specified in sub-clauses (i),(ii) and (iii) of clause (a) of section 66D of the Finance Act, 1994", are exempted in service tax vide entry no.54 of Mega Exemption Notification No 25/2012 dated 20.06.2012. Therefore, inquiry initiated in respect of Ahmedabad unit to pay service tax was wrong and not sustainable in law.
- The construction or construction related services etc provided by the sub-contractor to the appellant in relation to, any moveable or immovable property falls in the category of Works Contract Service. Therefore, all the "work sub-letted by appellant to sub contractor for supply of material plus labour fall in the category of works contract services. As per Entry No. 29 of Notification No. 25/2012-Service Tax dated- 20th June 2012, (h) "Sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt; Therefore, works contract services provided by Sub-Contractor to appellant are exempted from service tax, because, the principal/main works contract services provided by the appellant -C&DS,Unit41



(UP Jal Nigam), Ahmedabad are already exempted. Thus, work order issued for subletting of these works contract services are always exempted in service tax. Therefore, appellant is also not liable to pay any service tax under reverse charge law of service tax.

- The Appellant has complied with law and procedures, including payment of service tax. Thus, the proviso to section 73 (1) of Finance Act, 1994, is not rightly invoked for raising the demand for service tax against the appellant. The extended period for recovery of Service Tax was wrongly invoked and the SCN is not sustainable under the proviso to Section 73(1) of the Finance Act, 1994. Therefore, the service tax amount of Rs.76,63,608/- is not recoverable from the appellant under proviso to Section 73(1) of the Finance Act, 1994 read with Section 75 of the Finance Act, 1994.
- Similarly, the appellant are not liable for any penalty under Section 78 Finance Act, 1994 as they were not liable for any payment of service tax. When there is no suppression of material facts hence imposition of penalty under Section 78 of the Finance Act 1994 does not arise.
- Section 77 of the Finance Act 1994, deals with penalties that are levied on those assesses who are found to have contravened or violated any of the provisions or rules laid down by the Act. Since, the appellant has provided the documents as required under the Finance Act, 1994 and rules made thereunder, therefore, are not liable for imposition of any penalty.
- Neither has the appellant violated the provisions of Section 66B, 67 and 68 of Finance Act, 1994 and Rule 6 of the Service Tax Rules, 1994. Hence, appellant is not liable for penalty under Section 77(2) of the Finance Act, 1994 read with Section 174 of CGST Act 2017. Since the appellant has not violated the provisions of Section 70 of Finance Act, 1994 and Rule 7 of the Service Tax Rules, 1994, hence, they are not liable for imposition of late fee/amount under Section 70 of Finance Act, 1994 read with Rule 7 (C) ibid read with Section 174 of CGST Act, 2017.
- The demand, interest, penalties and late fees therefore needs to be set-aside.

6. Personal hearing in the matter was held on 01.09.2023. Shri Chandra Mohan Pathak, Advocate, Shri Rajeev Kumar Katheria, Project Manager, Shri Sanjay Kumar, Accountant appeared for personal hearing. They reiterated the submissions made in the appeal and handed over additional written submission with supporting documents. They submitted that the appellant provided services for construction of Government Navodaya Vidhyalaya, which are exempted under Sr.No.39 of Notification No. 25/2012-ST. They referred to few orders passed by various adjudicating and appellate authorities wherein, in similar circumstances the demands have been dropped. Therefore, they requested to set-aside the impugned order and to allow the appeal.

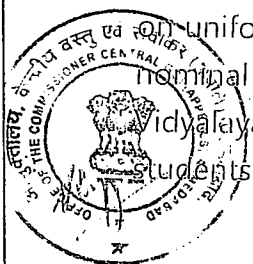


7. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as the additional submissions made during personal hearing. The issue to be decided in the present case is as to whether the service tax demand of Rs.76,63,608/- confirmed 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?

7.1 It is observed that the department is not disputing the classification of service nor is it disputing the fact that the services rendered were to the Governmental Authority. The appellant has provided services to the Javahar Navoday Vidhyalaya (JNV) in various parts of Gujarat state for construction of boundary wall and various other construction activities. The adjudicating authority has observed that the construction services provided to JNV does not fall under Entry No.13 of Notification No.25/2012-ST dated 12.06.2012. He though observed that the said services falls under Sr.No.12 (A) (earlier Sr. No. 12) of Notification No. 25/2012-ST dated 12.06.2012. However, he held that since entry no. (a), (c) & (f) of the aforesaid notification was withdrawn vide Notification No.06/2015-ST dated 01.03.2015 hence, the appellant is not eligible for the exemption under Sr. No. 12(A). He also held that in terms of Notification No. 09/2016-ST dated 01.03.2016, this entry was re-introduced wherein exemption was partially resorted but the condition specifically stated that the contracts to provide the said service should have been entered into before 01.03.2015 and appropriate stamp duty is also to be discharged before 01.03.2015. As the contracts listed above were entered after 01.03.2015, the exemption is not eligible to the appellant.

7.2 The appellant however have claimed that all the above works contract falls under Serial No.12, 12A of Notification No.25/2012-ST dated 20.06.2012, hence exempted. They claim that the appellant is a governmental authority and the services were rendered to a governmental authority hence in terms of Entry No. 54 they are exempted. I have gone through the documents submitted by the appellant in support of their contention. I find that the appellant (Construction & Design Service 'C&DS' in short) is a part of UP Jal Nigam. The UP Jal Nigam is a Public Health Engineering Department created in 1927 to provide drinking water supply and sewerage facilities in Uttar Pradesh. It is a Public Sector undertaking of the Government of U.P. The appellant firm is a branch of the UP Jal Nigam. The appellant firm provides wide range of services like pre-engineering, feasibility studies and detailed project reports, Engineering design and Consultancy services, Civil & structural construction for public sectors. The appellant is holding service tax registration No.AAALUO256CSD052 where 'L' as per the nomenclature denotes 'Local Authority'.

7.3 Similarly, I find that the services were rendered to Javahar Navoday Vidhyalaya (JNV) and are government run schools. They are fully residential and co-educational schools affiliated to Central Board of Secondary Education (CBSE). Budget for all the activities at JNVs are provided by the Ministry of Education. They offer free education to talented children from Class-VI to XII. They provide free boarding and lodging, expenses on uniforms, text books, stationery, to and fro rail and bus fare to students. However, a nominal fee @ Rs. 200/- per month is charged from students of Class- IX to XII as Vidyalaya Vikas Nidhi. The students belonging to SC/ST categories, girls, disabled students and children of the families Below Poverty Line (BPL) are exempted from



payment of this fee. Thus, I find that JNV is also a government run institution which provide free education to students and is run by the Ministry of Education. They are located in rural areas across the country and the State Govt. has to offer cost free land and rent free temporary buildings for the setting up of a Navodaya Vidyalaya.

7.4 The appellant has rendered construction services like construction of Boundary Wall at JNV Ahmedabad, Re-construction of Boundary Wall and Additional work at JNV, Amreli, Construction of Phase-A at JNV Ahmedabad. I find that all these construction activity was undertaken for the governmental authority as defined under clause (s) of the definition. The "**governmental authority**" means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution. The JNV are established and controlled by Central Government and their basic function is the promotion of education. As per Article 243W of the Constitution, the functions entrusted to a municipality also includes promotion of cultural, educational and aesthetic aspects. Javahar Navoday Vidhyalaya (JNV) are run by the Navodaya Vidyalaya Samiti (NVS), an autonomous organization under the Ministry of Human Resource Development, Department of School Education & Literacy, Govt. of India. The Chairman of the Samiti is the Hon'ble Minister of Human Resource Development. The Samiti functions through an Executive Committee under the Chairmanship of Hon'ble Minister of HRD. Thus, I find that JNV is a local school, governed by the HRD and their aim is to provide good quality modern education to the talented children predominantly from the rural areas; to progressively bring students from one part of the country to another in each school to promote national integration and enrich the social content.

7.5 To examine the exemption relevant text of the said notification is reproduced below:-

Notification No.25/2012-ST dated 20.06.2012

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) water supply, (ii) water treatment, or (iii) sewerage treatment or disposal; or



(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act;

7.6 In the above entry, items (a), (c) and (f) was omitted vide [Notification No. 6/2015-S.T., dated 1-3-2015]. However, vide Section 102 of the Finance Act, 2016, special provision was inserted, wherein retrospective exemption was provided to certain cases relating to construction of Government buildings. Section 102 is reproduced below;

SECTION 102. Special provision for exemption in certain cases relating to construction of Government buildings. — (1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable services provided to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of —

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession;

(b) a structure meant predominantly for use as —

(i) an educational establishment;

(ii) a clinical establishment; or

(iii) an art or cultural establishment;

(c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act,

under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all the material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.

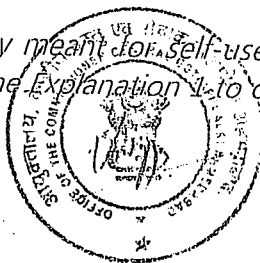
7.7 Thereafter vide Notification No.09/2016-ST dated 01.3.2016 after entry 12, with effect from the 1st March, 2016, the following entry shall be inserted, namely -

"12A. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;



under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date :

provided that nothing contained in this entry shall apply on or after the 1st April, 2020;”

7.8 From the nature of work carried out by the appellant for JNV, I find that the appellant were mainly entrusted the contract of construction, repair, renovation, or alteration of a structure meant predominantly for use as (i) an educational establishment.

7.9 In terms of **serial no.12 clause (a)** of the Notification No.25/2012-ST dated 20.06.2012, the services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a structure meant predominantly for use as (i) an educational establishment are exempted. As the services were rendered to JNV which is a governmental/local authority, I find that there is no bar in extending the exemption to the appellant.

8. Another ground for rejecting the exemption was that the contracts entered were not prior to 01.3.2015. I find that the appellant has submitted a copy of contract No.F.2-40(37)/2007-NVS(W) Phase-A dated 04.04.2008 wherein the Construction of Phase-A Works at JNV-Ahmedabad (Gujarat) was granted for Rs.696.16 Lacs. However, this contract was modified for administrative and expenditure sanctions and the same contract was re-assigned in 25.06.2015 vide Contract No. F.2-40(37)/2007- NVS (W) Ph-A/183 dated 25.06.2016, wherein it is mentioned that the current contract is in modification of original contract dated 08.4.2008. As the services are rendered by the governmental authority to another governmental authority, I find the same are exempted as the intent of the government was never to tax the basic amenities.

9. Accordingly, I find that the service tax demand of Rs.76,63,608/- is not sustainable in law. When the demand does not sustain there is no question of recovering the interest and imposing penalties thereon.

10. In light of above discussion, I set-aside the impugned order and allow the appeal filed by the appellant.

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.

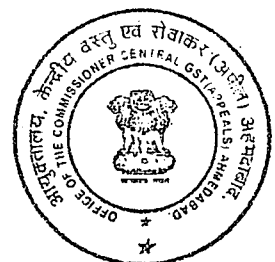
(Signature)
(शिव प्रताप सिंह)
आयुक्त (अपील्स)

Date: 22.09.2023

Attested

(Signature)

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



By RPAD/SPEED POST

To,
M/s. Construction & Design Services,
Sector ET-19/33, C&DS Unit 41,
Sterling City Near Water Tank,
Ahmedabad-380058

Appellant

The Additional Commissioner
CGST, Ahmedabad North

Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner, CGST, Division-II, Ahmedabad North
4. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
(For uploading the OIA)
- ✓ 5. Guard File.

