



**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:20230464SW000000C2AB**

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/2223/2022-APPEAL / 779-54
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-011/2023-24  
दिनांक Date : 21-04-2023 जारी करने की तारीख Date of Issue 26.04.2023
- आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. CGST-06/D-VI/O&A/12/Kaushalsinh/AM/2021-22  
दिनांक: 29.04.2022, issued by Deputy/Assistant Commissioner, CGST, Division-VI, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

**1. Appellant**

**M/s Kaushalsinh Bhavansinh Chavda,**  
**Plot No. 117, Sector F, Sterling City,**  
**Bopal, Ahmedabad-380058**

**2. Respondent**

**The Deputy/ Assistant Commissioner, CGST, Division-VI, Ahmedabad**  
**North , 7<sup>th</sup> 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, 4<sup>th</sup> 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 or 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> 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 Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूचि-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर 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 अपीलो 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) -

- (Section) खंड 11D के तहत निर्धारित राशि;
- लिया गलत सेनवैट क्रेडिट की राशि;
- 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:

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- 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. Kausalsinh Bhavansinh Chavda, Plot No. 117, Sector F, Sterling City, Bopal, Ahmedabad- 380058 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. GST-06/D-VI/O&A/12/Kausalsinh/AM/2021-22, dated 29.04.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable services but were not registered with the Service Tax Department.

2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15, it was noticed that the appellant had earned substantial income by providing taxable services. They had earned income of Rs. 81,79,444/- during the F.Y. 2014-15, which they reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" or "Total Amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)" of the Income Tax Act, 1961, on which no tax was paid. Letters were, therefore, issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for the F.Y. 2014-15. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The service tax liability was, therefore, quantified considering the income of Rs. 81,79,444/- as taxable income, based on the data provided by the Income Tax Department and the service tax liability of Rs. 10,10,979/- for said period was accordingly worked out.

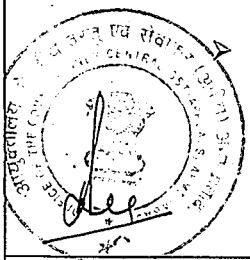
2.1 Thereafter, a Show Cause Notice (SCN) No. CGST-06/04-573/O&A/Kausalsinh/2020-2021 dated 28.09.2020 was issued to the appellant proposing recovery of service tax amount of Rs. 10,10,979/- not paid on the value of income received during the F.Y. 2014-15 along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of late fees under Section 70, imposition of penalties under Section 77(1) and Section 78 of the Finance Act, 1994 were also proposed.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs. 10,10,979/- was confirmed alongwith interest on the taxable services valued at Rs. 81,79,444/- provided during the F.Y. 2014-15. Late fees of Rs. 40,000/- was imposed under Section 70. Penalty of Rs. 10,000/- under Section 77 and penalty of Rs. 10,10,979/- was also imposed under Section 78.

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

- Letter seeking documentary evidence was sought vide letter dated 31.07.2020 followed by a reminder dated 24.09.2020 directing to submit the documents within a week's time and the SCN was subsequently issued on 28.09.2020, which shows that the department was in hurry to adjudicate the case without verifying the facts and without granting sufficient time to submit the documents.

The appellant has provided works contract service as a sub-contractor and in turn the main contractor had provided works contract service to the government by way of Construction of Hostel, Kitchen and Service Block for GMERS Medical



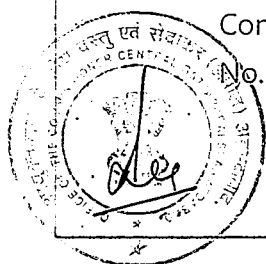
College at Himmatnagar, which is considered as exempted service vide Entry No. 12(a) / 12(c) and Entry No. 29 (h) of Notification No. 25/2012-ST. The Commissionerate of Health, Project Implementation Unit, Sector 12, Gandhinagar had awarded works related to Construction of Hostels Kitchen & Service Block for GMERS Medical College at Himmatnagar to M/s. Yashnand Engineer & Contractor as a contractor and in turn M/s. Yashnand Engineer & Contractor awarded part of said work to the appellant as a sub-contractor. As the work was to be completed in given time frame, the appellant was assigned the work with the condition to arrange for necessary material and labour required to complete the work.

- Demand notice was issued without investigation and merely on the data received from I.T. department as well as Form 26AS, which is not sustainable in law. They placed reliance on M/s. Amrish Rameshchandra Shah- TS-77-HC-2021 Bom ST; Sharma Fabricators & Erector Pvt. Ltd.- 2017 (S) GSTL 96 (Tri-All); Kush Construction- 2019 (24) GSTL 606, Alpa Management Consultants P. Ltd. – 2007 (6) STR 181.
- As there is no evidence establishing suppression of facts by the appellant, therefore, the extended period of limitation is not invocable.
- In the absence of tax liability, question of penalty, late fees and interest does not arise.

4. Personal hearing in the matter was held on 29.03.2023. Shri Punit Prajapati, Consultant, appeared on behalf of the appellant. He reiterated submissions made in the appeal memorandum. He stated that he would be submitting the relevant financial documents, as part of additional written submissions.

5. 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 submissions made at the time of personal hearing. Till date the appellant has not provided relevant financial documents hence I proceed to decide the case based on available records. The issue to be decided in the present case is as to whether the service tax demand of Rs. 10,10,979/- 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? The demand pertains to the period F.Y. 2014-15.

6. The adjudicating authority has, on perusal of the Work Order issued by Commissionerate of Health, Project Implementation Unit, Sector 12, Gandhinagar, observed that the M/s. Yashnand Engineer & Contractor was entrusted the contract of constructing proposed Hostels, Kitchen & service block for GMERS Medical College at Himmatnagar. M/s. Yashnand Engineer & Contractor (Main Contractor) had further entrusted the work of Labour contract to the appellant (sub-contractor). From the Profit & Loss Account submitted by the appellant, he observed that from the income of Rs. 81,79,444/- earned by the appellant, they had incurred expense of Rs. 70,83,610/- towards labour expenses paid. As there was no expense incurred towards purchase of material, he held that the nature of work carried out was not Works Contract but Labour Contract, which is not an exempted service in terms of Entry No. 12 (b) of Notification No. 25/2012-ST dated 20.06.2012. The adjudicating authority also held that the services



of sub-contractor provided to main-contractor is exempted vide Entry No. 29 (h) of said notification, if the service rendered is in the nature of Works Contract service.

6.1 The appellant, however, have contended that they have provided Works Contract Service to the main contractor M/s. Yashnand Engineer & Contractor. The main contractor was entrusted Works Contract Service by the government, which is considered as exempted service vide Entry No. 12(a) / 12(c) and Entry No. 29 (h) of Notification No. 25/2012-ST. However, in order to complete the work within the given time frame, they had to make necessary arrangement for material and labour required to complete the work. They submitted a copy of certificate dated 02.04.2022 issued by M/s. Yashnand Engineer & Contractor to this effect also.

6.2 On going through the above certificate issued by the main-contractor, it is observed that the main-contractor had sub-contracted certain work on works contract basis to the appellant and the sub-contracting was in relation to the civil construction and finishing work at GMERS Medical Hospital at Himmatnagar for the F.Y. 2014-15. However, whether the sub-contract granted to the appellant was for supply of labour or for works contract is not forthcoming as the appellant could not produce the Work Order issued by the main contractor, to establish that the sub-contracting was actually for the Works Contract and not for exclusive labour contract. In the absence of contract entered by the appellant with the main contractor, I find that it cannot be proved that the work sub-contracted was in the nature of Works Contract Service, especially when sale of goods has not taken place.

6.3 Clause (55) of Section 65B of the Finance Act, 1994, defines '**Works Contract**' as a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any moveable or immovable property or for carrying out any other similar activity or a part thereof, in relation to such property. So, under Works Contract Service, transfer of property in goods involved in the execution of such contract is a pre-requisite. The appellant's claim that they have carried out Works Contract service is not supported by the Work Order issued by main-contractor instead they produced a certificate which only mentions that the main-contractor had sub-contracted certain work on works contract basis to the appellant, which cannot be sufficient to examine the nature of service rendered by the appellant. Moreover, the appellant alongwith the appeal memorandum has stated that they would submit necessary documents to this effect. However, till date neither the Work Order issued by main-contractor nor copy of invoices issued by the appellant to the main-contractor were furnished, either before me or before the adjudicating authority to establish the fact that the contract executed between main-contractor and the appellant actually involved transfer to property/sale of goods. I, therefore, do not find any reason to interfere with the findings of the adjudicating authority as the contention of the appellant is not backed by any documentary evidence.

6.4 Further, the appellant have claimed exemption under Notification No. 25/2012 dated 20.06.2012. They claim that in terms of Entry No. 12(a) / 12(c) and Entry No. 29 (h)

of Notification No. 25/2012-ST, they are eligible for exemption. Relevant entry of said notification is furnished below;

**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;*

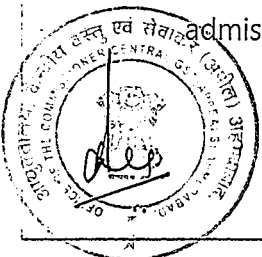
*(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or*

*(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;*

**29. Services by the following persons in respective capacities -**

***(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;***

In terms of Entry No. 12(a) above, 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 civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession are exempted. Thus any construction, completion, renovation of civil structure is exempted if provided to any government, local authority or governmental authority. The main contractor M/s. Yashand Engineer & Contractor was given the contract to construct Hostels, Kitchens & Service Block for GMERS Medical College at Himmatnagar. I find that construction activity carried out by main contractor is exempted as the same is provided to GMERS Medical College, which is a governmental authority. However, whether the same work was further sub-contracted to the appellant is not forthcoming as the appellant failed to produce Work Order issued by M/s. Yashand Engineer & Contractor to them. Nor could they produce any invoice raised to this effect. I, therefore, find that said exemption claimed by the appellant under Entry No. 12 (a) cannot be granted. Similarly, in terms of Entry No. 12(c) construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment are exempted. I find that P.G. Hostel of Civil Hospital Campus is a place where accommodation is provided to medical students enrolled in Post Graduation and is not an education or clinical centre. Thus, exemption claimed under said entry is also not admissible.



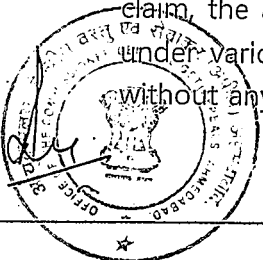
6.5 The adjudicating authority has not concurred with the claim of the appellant to have rendered the Works Contract Service and held that the service rendered was labour supply service to the main contractor and has taken the support of Board's Circular No. 147/16/2011-ST dated 21.10.2011 wherein at Para-2 & 3, it is clarified that;

*"2. The matter has been examined. Vide the circular referred above, it was clarified that when the service provider is providing WCS service in respect of projects involving construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc. and he in turn is receiving various services like Architect service, Consulting Engineer service, Construction of complex, Design service, Erection Commissioning or installation, Management, maintenance or repair etc., which are used by him in providing output service, then while exemption is available to the main contractor [as per Section 65 (zzzza) of the Finance Act], as regards the services provided by its subcontractors, the same are distinctly classifiable under the respective sub-clauses of section 65(105) of the Finance Act, as per their description and that their taxability shall be decided accordingly. It is thus apparent that just because the main contractor is providing the WCS service in respect of projects involving construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., it would not automatically lead to the classification of services being provided by the sub-contractor to the contractor as WCS. Rather, the classification would have to be independently done as per the rules and the taxability would get decided accordingly.*

*3. However, it is also apparent that in case the services provided by the sub-contractors to the main contractor are independently classifiable under WCS, then they too will get the benefit of exemption so long as they are in relation to the infrastructure projects mentioned above. Thus, it may happen that the main infrastructure projects of execution of works contract in respect of roads, airports, railways, transport terminals, bridges tunnels and dams, is sub-divided into several sub-projects and each such sub-project is assigned by the main contractor to the various sub-contractors. In such cases, if the sub-contractors are providing works contract service to the main contractor for completion of the main contract, then service tax is obviously not leviable on the works contract service provided by such sub-contractor."*

In light of above Board's Circular, I find that the services provided by the sub-contractors and other service providers are to be classified under respective services and are chargeable to service tax accordingly. However, after the introduction of negative list, in terms of Section 66B of the Act, service tax will be leviable on all services provided in the taxable territory by a person to another for a consideration other than the services specified in the negative list. Thus, I uphold the demand of Rs. 10,10,979/- under Section 73(1) which I find is sustainable on merits.

7. Another contention of the appellant is that the demand of service tax was raised merely on the basis of financial statements, hence not sustainable. Also, the demand is time barred as there is no suppression or willful mis-statement of facts on the part of appellant. I do not find any merit in the above argument. The appellant has not obtained service tax registration though they were receiving taxable income. Therefore, the demand was raised on the basis of the income reflected in the I.T. Returns on which no service tax was paid. The onus to challenge the allegation made in the SCN is on the appellant but they failed to produce relevant documentary evidence either before the adjudicating authority or alongwith the appeal memorandum to counter the findings of the adjudicating authority. In terms of Board's Instruction dated 26.10.2021, where the show cause notice were issued based on the third party data, the adjudicating authority should pass judicious order after proper appreciation of facts and submission of the noticee. As the appellant failed to submit requisite documents to substantiate their claim, the adjudicating authority, therefore, could not examine the exemption claimed under various notifications. Therefore, the argument that the demand was confirmed without any investigation is not correct. The appellant by not obtaining the registration





and by not filing the statutory returns willfully suppressed the taxable value with intent to evade the tax. Hence, I find that the extended period of limitation has also been rightly invoked to demand service tax not paid.

7.1. In view of the above, I find that the penalty imposed under Section 78, is also justifiable as it provides penalty for suppressing the value of taxable services. Hon'ble Supreme Court in case of *Union of India v/s Dharamendra Textile Processors* reported in [2008 (231) E.L.T. 3 (S.C.)], considered such provision and came to the conclusion that the section provides for a mandatory penalty and leaves no scope of discretion for imposing lesser penalty. I find that the demand was raised based on the income data provided by the Income Tax department and only after proper scrutiny of records submitted by the appellant, the demand was confirmed. The appellant were aware of their tax liability but chose not to discharge it correctly, which undoubtedly bring out the willful mis-statement and fraud with intent to evade payment of service tax. If any of the circumstances referred to in Section 73(1) are established, the person liable to pay duty would also be liable to pay a penalty equal to the tax so determined.

8. As regards the penalty under Section 77, the appellant have not made out any case to counter the imposition of said penalty. This penalty was imposed for failure to obtain registration in terms of Section 70 of the F.A., 1994, I therefore find that the penalty of Rs.10,000/- imposed is sustainable.

9. When the demand sustains there is no escape from interest. Hence, the same is also recoverable under Section 75 of the F.A., 1994. Appellant by failing to pay service tax on the taxable service are liable to pay the tax alongwith applicable rate of interest.

10. Further, I find that late fee of Rs. 40,000/- was imposed for non-filing of ST-3 Returns by the appellant. The appellant have not put forth any argument contending the imposition of late fees. As the appellant was rendering taxable service, they were duty bound to file ST-3 returns for the period (April, 2014 to September, 2014) and for (October, 2014 to March, 2015) on due date which was not done, therefore, I find that the appellant is also liable for late fee for not filing of ST-3 returns in terms of Section 70 read with Rule 7C of Service Tax Rules, 1994.

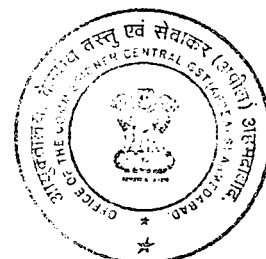
11. In view of the above discussions and findings, the impugned O-I-O is upheld and the appeal filed by the appellant stand rejected in above terms.

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]*  
21st April,  
(अखिलेश कुमार)  
आयुक्त (अपील्स) 2023.

Date: .04.2023

Attested  
*[Signature]*  
(Rekha A. Nair)  
Superintendent (Appeals)



CGST, Ahmedabad

**By RPAD/SPEED POST**

To,  
M/s. Kausalsinh Bhavansinh Chavda,  
Plot No. 117, Sector F,  
Sterling City, Bopal,  
Ahmedabad- 380058

**Appellant**

The Assistant Commissioner,  
Central Tax, CGST & Central Excise,  
Division-VI, Ahmedabad North  
Ahmedabad

**Respondent****Copy to:**

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.  
(For uploading the OIA)
4. The Superintendent (System), CGST, Appeals, Ahmedabad, for uploading the OIA on  
the website.
- ✓ 5. Guard File.

