



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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By SPEED POST

DIN:- 20231264SW0000555A6D

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/2454/2023 / 65-69
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-146/23-24 and 22.11.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	28.12.2023
(ङ)	Arising out of Order-In-Original No. 79/ADC/MR/2022-23 dated 26.12.2022 passed by The The Additional Commissioner, CGST & Central Excise, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	K. N. Corporation 155, Samarthnagar Society Nr. Jeevandeep Hospital, Sardar Nagar Hansol, Ahmedabad - 382475

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 :-

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 :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने 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।

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.

(ख) 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।



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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) 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।

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.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या ईए-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 मुख्य शीर्ष 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो 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 सेवा कर 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 :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलों 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।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004.
case of appeals other than as mentioned above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 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 मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 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) एके प्रति अपील के मामले में कर्तव्यमांग (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 सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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.

(6) (i) 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

The present appeal has been filed by M/s. K.N. Corporation, situated at 155, Jeevandeep Hospital, Samarthnagar Society, Hansol, Sardarnagar, Ahmedabad-382475 (hereinafter referred to as "the appellant") against Order-in-Original No. 79/ADC/MR/2022-23 dated 20.12.2022 passed by The Additional Commissioner, Central GST & Central Excise, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant are holding PAN No AAVPT7949Q. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2015-16 & 2016-17, it was noticed that the appellant has shown the income from "gross receipt from service" in their ITR filed with the Income Tax Department but didn't get registered with the service tax authorities. Details of the income are as under:-

F. Year	Sales of services(ITR)	Service Tax Not paid (in Rs.)
2015-16	2,89,89,545/-	42,03,484/-
2016-17	2,54,61,561/-	38,19,234/-
Total	5,44,51,106/-	80,22,718/-

The appellant were called upon explanation along with the supporting documents vide letter/mail dated 09.04.2021. However, the appellant didn't submit any documents till the issuance of the SCN.

2.1 The appellant was granted a pre consultation on 23.04.2021 but the appellant didn't appear for the same. Subsequently, Show Cause Notice No. STC/15-150/OA/2021-22 dated 23.04.2021 was issued demanding Service Tax amounting to Rs. 42,03,484/- for the period FY 2015-16 and Rs. 38,19,234/- for the period FY 2016-17 under provisions of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 and imposition of penalties under Section 77 and Section 78 of the Finance Act, 1994.

2.3 In response of the SCN dated 23.04.2021 issued by the Addl. Commr., CGST & C. Ex., Ahmedabad North, the appellant didn't file any submission. PH was also held vide various letters dated 08.02.2022, 27.04.2022, 10.11.2022 and 22.11.2022 but all were returned with the remark "Not Known". Even the jurisdictional range superintendent has also visited to deliver the another PH letter dated 12.12.2022 but the same couldn't be delivered as the premises was closed. Hence the same was served as per Section 37C(1)(c) of the Central Excise Act, 1944. Therefore, the adjudicating authority decided the matter on the ex-parte basis.



The adjudicating authority adjudicated the subject SCN dated 23.04.2021 vide the impugned order wherein the demand of Service Tax amounting to Rs. 42,03,484/- for the period FY 2015-16 and Rs. 38,19,234/- for the period FY 2016-17 (total Rs 80,22,718/-) was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2015-16 & 2016-17. Further (i) Penalty of Rs. 80,22,718/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1) of the Finance Act, 1994.

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

- Appellant is engaged in providing Works-Contract services, by way of construction of roads to (i) Ahmedabad Municipal Corporation, and (ii) Other Contractors in capacity of sub-contractors who have been awarded the road construction work from AMC. During the year F.Y. 2015-16 and F.Y. 2016-17, they have provided the service of Road Construction to following entities.

Table-I

Sr. No.	Name	2015-16	2016-17	Total
1	Ahmedabad Municipal Corporation	1,95,42,810/-	2,49,86,355/-	4,45,29,165/-
2	Akash Infra Projects Limited	23,84,864/-	-	23,84,864/-
3	JRA Infrastructure Limited	7,02,153/-	-	7,02,153/-
4	Shree Infracon Pvt Ltd	4,59,279/-	4,75,206/-	9,34,485/-
5	Vishal Infraglobal Pvt. Ltd.	43,20,274/-	-	43,20,274/-
6	J Kumar Infraprojects Limited	15,80,165/-	-	15,80,165/-
	GRAND TOTAL	2,89,89,545/-	2,54,61,561/-	5,44,51,106/-

The appellant states that Sales value as mentioned above includes the following service activities.

- Construction of RCC Road and laying paver block in main TP Scheme Roads and in Housing Society,
- Construction of Divider on middle of the public road (TP Scheme) &
- Construction of Footpath on sides of the public road (TP Scheme Road).

- Further they submitted that the work awarded by the Ahmedabad Municipal Corporation falls under the development scheme undertaken by AMC namely, "Saheri Vikas Yojna" (Town Development Plan). The Service tax department, based on the data received from Income Tax Department, issued a Show Cause Notice by assuming the income declared in Income Tax Return as value of taxable services for the F.Y. 2015-16 and F.Y. 2016-17 and raised the demand. Against the alleged SCN, the appellant vide reply dated 25-5-2022 submitted the relevant documents for the period from 01-04-2015 to 30-06-2017 to the Jurisdictional Range office. In his



submission, the appellant has clarified that he is engaged in the work allotted by the Ahmedabad Municipal Corporation which is exempted from service tax.

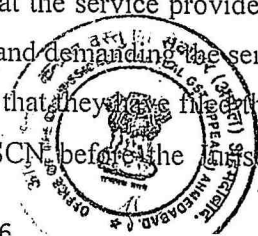
- The appellant submitted that the SCN is issued merely on the basis on the data received from Income Tax Department and the same is not sustainable in law. They relied upon the decision in the case of Amrish Rameshchandra Shah-2021-TIOL-583-HC-MUM-ST.
- The SCN has merely alleged non-payment of service tax on the basis of the Income Tax Returns and has failed to substantiate the proposals made therein. Reliance is placed upon the decision in the case of Kush Constructions - 2019 (24) GSTL 606 (Tri. All.)
- The SCN did not make any allegation of their providing any service which was liable to service tax. There should be some evidence proving the allegation of providing any kind of taxable service and then only service tax liability can be determined. No cogent reason or justification is forthcoming for raising the demand against the non-payment of service tax is alleged against the appellant. Service tax has been raised merely on the basis of the data received from the Income Tax, which indicated that the appellant had reported income from sale of service in their IT. However, the data received from the Income Tax department cannot form the sole ground for raising of demand of service tax.
- The Appellant submitted that they are engaged in providing works contract services of road construction including footpath and divider of the road. The service by way of construction of the road is exempted wide entry no. 13 of the Notification 25/2012 dated 20.6.2012 i.e. mega exemption notification. For reference the entry No. 13 of the Mega Exemption Notification No. 25/2012-ST dated 20.6.2012 is produced as under:

"Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, -

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public.

They further stated that they provided the service of construction roads, laying paver blocks, construction of dividers and footpaths on public roads and in housing societies. As the AMC is local body and is responsible to provide infrastructure to general public it provides the work orders to various bidders and the appellant is one of them. The service provided is exclusively for development of infrastructure for general public. Therefore the same is exempted from the service tax as per entry no. 13 of the Notification 25/2012 dated 20.6.2012.

- Further the appellant also submitted that the service provided by them falls under the category of the works contract services and demanding the service tax on full rate is not correct in the law. They also contended that they have filed their submission vide letter dated 25.05.2022 in response of the SCN before the Jurisdictional Range IV, Div-



I, CGST, Ahmedabad North Commissionerate. Therefore, there is no suppression or concealment and penalty couldn't be imposed upon them under Section 78 of the Finance Act, 1994. The Appellant placed reliance upon the following decisions;

- a. Suvikram Plastex Pv. Ltd. v. CCE, Bangalore - III 2008 (225) ELT 282 (7)
- b. Rallis India Ltd. v. CCE, Surat 2006 (201) ELT 429 (T)
- c. Patton Ltd. v. CCE, Kolkata - V 2006 (206) ELT 496 (T)
- d. CCE, Tirupati v. Satguru Engineering & Consultants Pvt. Ltd. 2006 (203)
- e. Indian Hume Pipes Co. Ltd v. CCE, Coimbatore 2004 (163) ELT 273 (T)

- The appellant submitted that the demand raised on the basis of the income shown in ITR, without further enquiry and considering the submission is not legally sustainable. They denied all the demand confirmed vide impugned OIO and requested that same may be quashed and set-aside.

4. Personal hearing in the case was held on 08.09.2023, 18.09.2023 & 09.10.2023 but no one appears on behalf of the appellant.

5. On going through the appeal memorandum, it is noticed that the impugned order was issued on 26.12.2022. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, during the course of personal hearing and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise.

6. I find that in the SCN in question, the demand has been raised for the period FY 2015-16 & 2016-17 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services" provided by the Income Tax Department, no other reason or justification is seen from the SCN for raising the demand against the appellant. As the appellant has shown their income from "Sales of Services" in their ITR filed for the F.Y 2015-16 & 2016-17, but neither they got registered with the service tax department nor paid any service tax for the concerned period. The appellant also failed to file their submission before the adjudicating authority, the adjudicating authority confirmed the demand in absence of the sufficient documentary evidence.

7. It is observed that the main contentions of the appellant in the appeal memorandum is that they have provided the service of "Works Contract Service" to various entities mentioned in Table-I. While going through the above table and documentary submission made by the appellant it is noticed that the appellant has been awarded the various work orders from "Ahmedabad Municipal Corporation". Details of the same are as under:

Table-II



Sr. No	Tender no	Date	amount	Period
1	551	28.12.2016	68,94,276	16-17
2	550	28.12.2016	68,49,623	16-17
3	530	28.12.2016	14,57,237	16-17
4	231	28.12.2016	73,62,500	16-17
5	187	27.10.2016	4,79,500	16-17
6	292	11.06.2015	36,87,473	15-16
			2,67,30,609/-	

As per the submission the AMC is a local body and the same is responsible to provide infrastructure to general public. It has awarded the above work orders to the appellant. The service provided against the above order appears to be useful for development of infrastructure for general public and the same is exempted from the service tax as per entry no. 13 of the Notification 25/2012 dated 20.6.2012. The appellant has submitted the copies of the all above work orders in supporting of their claim. Therefore the contention of the appellant appears to be sustainable in all above 06 cases mentioned in **Table-II**.

Further, As the total amount considered taxable by the adjudicating authority for the F.Y 2015-16 & 2016-17 is 5,44,51,106/-(Table-I) and the appellant has submitted the documentary evidences only for amount Rs. 2,67,30,609/-(Table-II). The appellant failed to furnish any documentary evidences regarding the rest of the amount Rs. 2,77,20,497/- and in absence to the same, the service tax liability can't be ascertained.

8. In light of the above, I am of the considered view that the activities (Only Covered in Table-II) carried out by the appellant during the FY 2015-16 & 2016-17, are not liable to pay Service Tax. Applicability of service tax on rest of the amount Rs. 2,77,20,497/- needs to be examined at the adjudication stage. As the appellant failed to furnish the documentary evidences (For amount Rs. 2,77,20,497/-) in support of their contention before adjudicating authority and before me also, In absence of the proper documentary evidences/records it can't be correctly decide whether service tax is applicable or not on the said amount.

9. In view of above, I remand back the impugned order to the adjudicating authority to re-examine the issue and decide it afresh. The 'appellant' is also directed to submit all the relevant documentary evidences, to the satisfaction of the adjudicating authority required for the verification of the facts.

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

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



G. J.
(ज्ञानचंद जैन)
आयुक्त (अपील्स)

Attested

Date :22.11.2023

Manish Kumar
Superintendent(Appeals),
CGST, Ahmedabad

By RPAD / SPEED POST

To,
M/s. K.N. Corporation,
situated at 155, Jeevandeep Hospital,
Samarthnagar Society, Hansol,
Sardarnagar, Ahmedabad-382475

Appellant

The Additional Commissioner,
CGST, Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Additional Commissioner, CGST, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North
(for uploading the OIA)
- 5) Guard File
- ✓ 6) PA file



