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- टेलेफैक्स07926305136

DIN: 20230764SW0000919119

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/266/2023-APPEAL /3191 -96

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-43/2023-24**
दिनाँक Date : **30-06-2023** जारी करने की तारीख Date of Issue 17.07.2023

आयुक्त (अपील) द्वारा पारित
Passed by **Shri Shiv Pratap Singh**, Commissioner (Appeals)

ग Arising out of Order-in-Original No. **59/JC/LD/2022-23** दिनाँक: **10.11.2022**, issued by Joint Commissioner, CGST, Ahmedabad-North

ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

   M/s Rajdeep Project force Pvt. Ltd,
   402, Ashatmangal Complex, Shahibaug,
   Ahmedabad-380004

2. Respondent
   The Joint Commissioner, CGST, Ahmedabad North , 2nd Floor, Custom House, Near All India Radio, 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 पूवोक्त 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 प्रकिया 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 मामलें 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 डयूटी केडिट 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 अधिनियम् (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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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 Ruie 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. Registar 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 ओदश 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 हैं।

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 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 in 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) -

(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. Rajdeep Project Force Pvt. Ltd., 402, Ashatmangal Complex, Shahibaug, Ahmedabad-380004 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 59/JC/LD/2022-23 dated 10.11.2022, (in short '*impugned order*') passed by the Joint Commissioner, Central GST, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable services and holding Service Tax Registration No. AAECR5530MSD001.

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 to F.Y. 2016-17, it was noticed that the appellant had shown less amount of 'Gross Value of Services Provided' in the Service Tax Return compared to that with the '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. The total value of services declared in the ITR for the said financial years was Rs. 16,45,58,889/- and the value as per Form 26AS was Rs. 14,28,79,532/-, whereas, the total value of services provided as per ST-3 Return was Rs. 7,01,44,242/-. Considering the highest difference, amount of Rs. 9,44,14,647/- was arrived as the amount less shown in the ST-3 Returns, 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 to F.Y. 2016-17. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The service tax liability of Rs. 1,30,67,488/- was, therefore, quantified considering the total income of Rs. 9,44,14,647/-.

2.1 A Show Cause Notice (SCN) No. STC/15-87/OA/2020 dated 29.09.2020 was, therefore, issued to the appellant proposing recovery of service tax amount of Rs. 1,30,67,488/- not paid on the value of income received during the F.Y. 2014-15 to F.Y. 2016-17, along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 77(1) and 77(2) and under Section 78 of the Finance Act, 1994 were also proposed. Late fee was also proposed to be imposed under Rule 7C of the Service Tax Rules, 1994.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs. 1,30,67,488/- was confirmed alongwith interest on the taxable services provided during the F.Y. 2014-15 to F.Y. 2016-17. Penalty of Rs. 10,000/- under Section 77(1); penalty of Rs. 10,000/- under Section 77(2) and penalty of Rs. 1,30,67,488/- was also imposed under Section 78. Late fees of Rs.20,000/- was also imposed under Section 70 of the Act.

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

- The differential value on which the demand of Rs. 1,30,67,488/- was made is in respect of housekeeping and cleaning services rendered to government department as well as to education institution, which are exempt from levy of service tax.

- The cleaning services were provided mainly to Government Hospitals, Educational Institutions and Government Offices, which were exempted as per Sl. No. 25 of Notification No. 25/2012-ST dated 20.06.2012. The said entry was amended vide Notification No. 06/2014-ST dated 11.07.2014, wherein the services provided to Government, Governmental Bodies and Governmental Authorities by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation were exempted.

- The adjudicating authority has not given any valid reason for not accepting the valid ground raised by the appellant. Thus, the order is not a speaking order and demand was confirmed merely on the basis of third party data provided by the Income Tax Department. Hon'ble High Court of Bombay in the case of Amrish Rameshchandra Shah – 2021-TIOL-583-HC-MUM-ST had quashed identical show cause notice in which service tax was demanded without any verification and based on data provided by the I.T. Department.

- The SCN does not adduce any evidence to prove that the income shown in the ITR was from any taxable service provided by the appellant. Thus, the order was passed without any tangible and cogent evidence of appellant providing taxable service, hence not sustainable in law. They placed reliance in the decision passed in following cases:-
  - Kush Construction- 2019 (24) GSTL 606 (Tri-All);
  - Go Bindas Entertainment Pvt. Ltd- 2019 (027) GSTL 397 (Tri-All)
  - Vijat Packaging Systems Ltd- 2010 (262) ELT 832 (Tri-Bang)
  - Triveni Casting Pvt. Ltd – 2015 (321) ELT 336
  - K.J. Diesels (P) Ltd- 2000 (120) ELT 505 (Tri)

- The housekeeping services provided were to Government Educational Institute has been confirmed under the category of 'Manpower Supply'. These services are exempted vide Sl. No. 09 of Notification No. 25/2012-ST. Board vide Circular No. 172/7/2013-ST dated 19.09.2013 have also clarified that cleaning services, housekeeping services and security services provided to an educational institution are exempted from services. These services were to ITIs (Industrial Training Institute), which are exempted as these institutions are covered under clause (l) of the Negative List.

- It is settled law that any exemption notification has to be interpreted based on the language used therein. They placed reliance on following citations;
  - Hemraj Gordhandas- 1978 (2) ELT (J350) (SC)
  - Mangalore Chemicals & Fertilizers – 1991 (55) ELT 437 (SC)
  - Gujarat Feritlizer Co. – 1997 (91) ELT 3 (SC)

- Certain services provided to Dairies on which service tax was paid, however, while computing service tax, this amount was not deducted and the demand was raised on the entire value of service including those which has suffered taxes. Therefore, the service tax liability needs to be re-calculated after removing the value of services which have were exempted and services which have suffered service tax after giving the cum-tax benefit price as per Section 67 of the Finance Act.

- The appellant have been filing ST-3 returns regularly and since no tax has been charged on services under the belief that such services are exempted hence suppression cannot be alleged. Thus, the notice has been issued beyond the normal period of limitation.

- Further the demand covering F.Y. 2011-12 to 2015-16 (upto September, 2015) has already been issued invoking extended period vide SCN No. DGCEI/AZU/36-50/2016-17 dated 13.10.2016 hence the present notice issued for subsequent period cannot be issued invoking extended period of limitation. Board vide Circular No.1053/2/2017-CX dated 10.03.2017 has clarified that second SCN issued by invoking extended period shall not sustain legally if extended period is already invoked in the first SCN. They placed reliance on following decisions:

  - Nizam Sugar Factory- 2008 (9) STR 314 (SC).
  - Continental Foundation Jt Venture- 2007 (216) ELT 177 (SC)
  - Mysore Kirloskar Ltd- 2008 (226) ELT 161 (SC)
  - Cosmic Dye Chemicals – 1995 (75) ELT 721 (SC)

- In the absence of mens rea no penalty can be imposed. They placed reliance on following decisions:-
  - Malay I Net Communication- 2010 (18) STR 451 (Tri-Del)
  - Adhunik Steels Ltd- 2009 (13) STR 487 (P&H)
  - Jivanbhai D.Makwasna- 2010 (20) STR 605 (Guj)

- They prayed to set-aside the impugned order.

3.1 They also filed written submission dated 31.05.2023, wherein they reiterated the submissions made in the appeal memorandum and also submitted a copy of SCN No. DGCEI/AZU/36-50/2016-17 dated 13.10.2016 proposing service tax demand of Rs. 92,99,007/- for the period covering F.Y. 2011-12 to F.Y. 2015-16 (upto September, 2015) and copy of O-I-O No. AHM-EXCUS-003-COM-002 to 004-20-21 dated 10.06.2020.

4. Personal hearing in the matter was held on 23.06.2023. Shri M. H. Raval, Consultant, appeared on behalf of the appellant. He reiterated the submission made in the appeal memorandum and those in additional written submission, made at the time of earlier personal hearing held on 31.05.2023 before the then Commissioner (A). He submitted that the SCN invoking extended period is bad in law since DGCEI had already issued a SCN earlier invoking extended period in the same matter. He also submitted that the appellant was providing Works Contract Services to Government Agencies which are exempt from service tax under mega exemption Notification No.25/2012-ST. He also submitted a copy of earlier SCN issued by DGCEI dated 13.10.2016. He also submitted that a similar matter was already decided by Commissioner Gandhinagar in case of same appellant for his another company M/s. Randeep Enterprise vide OIO dated 10.06.2020. He undertook to submit copies of related work orders, Form-26AS, Audit Reports, Balance Sheets, Profit & Loss Account etc within a week. He requested to set-aside the impugned order.

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, additional submissions as well as the submissions made at the time of personal hearing. The appellant undertook to submit copies of related work orders, Form-26AS, Audit Reports, Balance Sheets, Profit & Loss Account etc within a week but till date has not submitted the copies of work order, I therefore proceed to decide the case based on the records available. The issue to be decided in the present case is as to whether;

a) The service tax demand of Rs 1,30,67,488/- 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?

b) The demand notice dated 29.09.2020 issued to the appellant covering the period from F.Y 2014-15 to F.Y. 2016-17 is barred by limitation or otherwise?

The demand pertains to the period F.Y. 2014-15 to F.Y. 2016-17.

6. It is observed that the appellant is registered with the department for providing Cleaning Services and Manpower Recruitment or Supply Agency's Service and has been filing ST-3 Returns regularly. The impugned notice proposing demand of Rs 1,30,67,488/- has been issued to the appellant on the basis of the third party data provided by the Income Tax Department. The appellant before the adjudicating authority had contested the demand and submitted a bifurcation of services rendered during period April, 2014 to Match, 2017. They have claimed that during said period, the Cleaning and Housekeeping Services were rendered to various State Government Department, Educational Institute, District Courts, Body Corporate. In some cases, services were rendered to various other authorities and service tax liability on such services was discharged.

6.1 They also claimed that the Cleaning and Housekeeping Services provided to Government Department as well as to the Educational Institutes are exempted vide Sl. No. 25 of Notification No. 25/2012-ST dated 20.06.2012 and vide Sl. No. 09 of Notification No. 06/2014-ST dated 11.07.2014. They claimed that Cleaning Services provided to Government, Governmental Bodies and Governmental Authorities by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation were exempted. This entry was amended vide Sl. No. 25 of Notification No.06/2014-ST wherein the government has consciously removed the wordings functions ordinarily entrusted to Municipality was removed so as to cover all services provided by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation activities.

6.2 Further, for the Housekeeping Services they have claimed that these services were provided to the ITIs (Industrial Training Institute) which are covered under clause (l) of the Negative List and hence exempted vide Sl. No. 09 of Notification No.25/2012-ST. They also contended that in certain cases services were provided to Dairies on which service tax was already paid however, while computing service tax this amount was not deducted and demand was raised on the entire value of service including those which suffered taxes. They, therefore, claim that the service tax liability needs to be re-

calculated after considering the exemption claimed, deducting the value of services which have already suffered service tax. Also, since no tax was collected under the belief that services rendered to governmental institutes are not taxable, the benefit of cum-tax benefit as per Section 67 of the Finance Act should be extended.

6.3 It is observed that on the above exemption claimed by the appellant on Cleaning and Housekeeping Services rendered to various State Government Department, the adjudicating authority after examining the relevant Entry no. 25 of Notification No.25/2012-ST dated 20.06.2012, held that these services were not covered under said entry as they cannot be considered as activities entrusted to municipality. It was also stated that the appellant has not produced any work orders, invoices or documentary evidences to substantiate their claim that the work was originally allotted to them and was performed by them. He observed that they also failed to establish that the services rendered were exclusively provided to the Government, Local Authority or Government Authorities. The adjudicating authority held that after introduction of negative list w.e.f. 01.07.2012, all the services which are not covered under negative list are classifiable under 'service' defined under Clause (44) of Section 65B of the Finance Act, 1994. Therefore, in the absence of any documentary evidences the exemption claimed by the appellant was denied by the adjudicating authority.

6.4 The adjudicating authority further observed that under Sl. No. 09 of Notification No. 25/2012-ST, the exemption is granted to 'auxiliary education services' provided to educational institute but this entry was omitted vide Notification No.06/2014 dated 11.07.2014, therefore Board's Circular No. 172/7/2013 dated 19.09.2013, clarifying that housekeeping services are also covered under 'auxiliary education services', relied by the appellant, cannot be made applicable to the present case. The adjudicating authority therefore confirmed the entire demand against the appellant, as no documents were produced to justify the value difference noticed in ITR vis-a-vis the ST-3 Returns.

6.5 It is observed that the entire demand has been raised based on the third party data. Board, vide Instruction dated 26.10.2021, has specifically directed that 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. The appellant are contending that they have rendered Cleaning and Housekeeping Service which were exempted vide Sl. No. 25 of Notification No. 25/2012-ST dated 20.06.2012 and vide Sl. No. 09 of Notification No. 06/2014-ST dated 11.07.2014 and have also contested the demand on limitation. As the reasons for differential income were not justified alongwith supporting documents, the entire demand was confirmed considering the differential income noticed in the ITR filed during the F.Y. 2014-15 to F.Y.2016-17.

6.6 The appellant have claimed exemption on Cleaning Services under **Sl. No. 25** of Notification No. 25/2012-ST & Notification No. 06/2014 and exemption on Housekeeping Service under **Sl. No.09** of Notification No. 25/2012. To examine their claim, relevant texts of the said notifications are reproduced below:-

Notification No. 25/2012

Sl.No. 9. Services provided to or by an educational institution in respect of education exempted from service tax, by way of,-

(a) auxiliary educational services; or
(b) renting of immovable property;

*(f) "**auxiliary educational services**" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge – enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution;*

Sl. No. 09 as amended vide Notification No. 06/2014

*"**9. Services provided, -***

(a) by an educational institution to its students, faculty and staff;
(b) to an educational institution, by way of,-
(i) transportation of students, faculty and staff;
(ii) catering, including any mid-day meals scheme sponsored by the Government;
*(iii) **security or cleaning or house-keeping services performed in such educational institution;***
(iv) services relating to admission to, or conduct of examination by, such institution;";

*'(oa) "**educational institution**" means an institution providing services specified in clause (l) of section 66D of the Finance Act, 1994 (32 of 1994).";*

Sl.No.25 Services provided to Government, a local authority or a governmental authority by way of –

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

(b) repair or maintenance of a vessel or an aircraft;

Sl. No. 25 as amended vide Notification No. 06/2014

"(a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation; or";

6. It is observed that in terms of Sl. No. 09 of Notification No. 25/2012-ST, 'auxiliary education services' rendered to an educational institution in respect of education is exempted from service tax. Auxiliary education services covers services relating to

imparting any skill, knowledge, education or development of course content or any other knowledge – enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution.

6.8 Later, this entry was amended vide Sl. No. 09 of Notification No. 06/2014-ST, wherein the security, cleaning & housekeeping service provided to an educational institution specified in clause (l) of Section 66D of the Finance Act, 1994 (32 of 1994) were exempted with effect from 11.07.2014. However, vide Finance Act, 2016, the negative list was amended and this entry was deleted with effect from its enactment. So, the exemption available to cleaning & housekeeping service vide aforesaid notification was subsequently withdrawn from 14th May, 2016, vide Finance Act, 2016. As the appellant have failed to produce any documentary evidences like invoices, contracts or other relevant documents, their claim of above exemption could not be examined on merits, in terms of above notifications.

6.9 Similarly, in terms of Sl. No. 25 of Notification No. 25/2012-ST, services rendered to the Government, a local authority or a governmental authority by way of carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation are exempted. This entry was amended vide Notification No. 06/2014-ST, wherein services rendered to the Government, a local authority or a governmental authority by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation was exempted. The appellant are claiming that the cleaning services rendered to Government Hospitals, Educational Institutions and Government Offices are exempted vide Sl. No.25 of the Notification No. 25/2012-ST & vide Sl. No. 25 of Notification No. 06/2014-ST. However, I find that they could not produced any documentary evidence either before the adjudicating authority or before the appellate authority to establish that the services rendered were in the nature of cleaning services and were rendered to government, a local authority or a governmental authority. Hence, their claim of exemption in terms of above entries could not be examined on merits.

7. Further, the appellant vehemently have also contested the demand on limitation. Before the adjudicating authority they have contended that the demand for the F.Y. 2011-12 to 2015-16 (upto 30.09.20215) was already issued by DGCEI vide SCN dated 13.10.2016 by invoking extended period, hence subsequent SCN cannot be issued by again invoking extended period. They also drew attention of the adjudicating authority to the O-I-O No. AHM-EXCUS-003-COM-002 to 004-20-21 dated 10.06.2020, issued by the Commissioner, CGST & C.Ex., Gandhinagar, passed in the case of (i) M/s D.B. Enterprise, Mehsana (ii) M/s Rajdeep Enterprise, Gandhinagar and (iii) M/s. Lucky Management, to support their contention that in similar case of other assesses, after issuance of earlier notices by DGCEI, AZU, subsequent notices issued were periodical in nature.

7.1 From the above facts, it appears that the appellant were issued a SCN. No. DGCEI/AZU/36-50/2016-17 dated 13.10.2016 by DGCEI, AZU, covering demand for the F.Y. 2011-12 to F.Y. 2014-15 **(upto September, 2015)**. This DGCEI SCN proposed service tax demand of Rs. 92,99,007/- against the **Cleaning Services** (provided by the appellant during 01.07.2012 to 30.09.2015 to Government Body/Non-Commercial Building and to Commercial Premises during 01.04.2011 to 30.09.2015) and **Manpower Agency Services** provided to (Government Body during 01.04.2011 to 30.09.2015, services provided to Commercial Premises/Body Corporates during 01.04.2011 to 30.09.2015 and services provided to Governmental Educational Institute during 11.07.2014 to 30.09.2015). It also alleged that in some cases the appellant charged and collected service tax but did not deposit the same in the treasury.

7.2 Later, on the same issue, the impugned notice was issued based on the data provided by third party i.e. the Income Tax Department. This impugned SCN covered period from **F.Y. 2014-15 to 2016-17.** It is observed that the period of (April, 2015 to September, 2015) was already covered in the earlier notice dated 13.10.2016, issued by DGCEI. However, this period was again covered in the impugned notice. As the period of (April, 2015 to September, 2015) is overlapping in the present notice, the demand for said period shall not sustain legally being already covered in earlier SCN. The demand for the period (April, 2015 to September, 2015) once issued cannot be re-assessed in the subsequent notice covering same period. I, therefore, find that the demand to that extent has been issued indiscriminately merely based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns and totally ignoring the fact that demand for the period April, 2015 to September, 2015 was already issued by DGCEI, AZU, by invoking extended period. Thus, I hold that the demand covering period April, 2015 to September, 2015, is overlapping and hit by limitation.

7.3 Next question arises whether the demand for the remaining period **(i.e. October, 2015 to March, 2017)** is sustainable on limitation or not? So far as the, aforementioned show cause notice dated 13.10.2016 and 29.09.2020 are concerned, they cover same issue. The authorities have invoked the extended period of limitation in both the show cause notices. This can be done if the appellant is guilty of suppression. In the present case, the appellant contends that it is not guilty of suppression as they were under the bonafide belief that they were not legally bound to pay service tax as the services rendered were exempted.

7.4 The adjudicating authority has held that short payment of service tax was noticed only on the basis of the income data provided by the CBDT and that the appellant deliberately did not supply the supporting documents of the actual services rendered by them and the service tax involved therein. He therefore by relying on the observations made by Hon'ble Gujarat High Court in the case of Neminath Fabrics Pvt Ltd. **-2010 (256) ELT 369 (Guj)** held that the extended period has been rightly invoked in the impugned notice.

7.5 It is observed that the impugned show cause notice was issued based on the third party data provided by CBDT. The suppression of facts is alleged on the grounds that the appellant at no point of time has disclosed the differential value of service, which came to the notice of the department only after going through the third party data provided

by the Income Tax Department. Such allegation is baseless and misleading as in the earlier notice issued by DGCEI, AZU as well as in the present notice, the facts stated and the allegations made therein are similar. The only difference, in the impugned show cause notice, is that the demand has been raised considering the difference in the taxable value reported in the ITR/Form 26 and ST-3 Return filed with the respective department, whereas the earlier show cause notice is the outcome of investigation carried out by the DGCEI officers.

7.6 The appellant is registered with the department for providing Cleaning Services and Manpower Recruitment or Supply Agency Service and has been filing ST-3 Returns regularly. At no point of time the self assessment made by the appellant was challenged by the department. Therefore, at the later stage it cannot be alleged that the appellant has suppressed the facts from the department. Further, in the impugned SCN neither any suppression of facts on the part of the appellant is brought out clearly nor any investigation was carried out to establish the nature of service rendered. Board vide Circular dated 26.10.2021, has specifically instructed the field formations that while analyzing ITR-TDS data received from Income Tax, a reconciliation statement has to be sought from the taxpayer for the difference and whether the service income earned by them for the corresponding period is attributable to any of the negative list services specified in Section 66D of the Finance Act, 1994 or exempt from payment of Service Tax, due to any reason. It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns. To issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, and prevent issue of indiscriminate show cause notices. However, no such investigation or reconciliation was done while issuing the notice.

7.7 Further, once the facts of non-payment of service tax by the appellant on Cleaning & Housekeeping Service were already known to the department at the time when the earlier show cause notices came to be issued, it cannot be said that the impugned show cause notice are based on new or different facts than the earlier ones. Board at Para-3.7 of Circular No. 1053/2/2017-CX., dated 10-3-2017, has also clarified that;

> *"3.7* ***Second SCN invoking extended period:*** *Issuance of a second SCN invoking extended period after the first SCN invoking extended period of time has been issued is legally not tenable. However, the second SCN, if issued would also need to establish the ingredients required to invoke extended period independently. For example, in cases where clearances are not reported by the assessee in the periodic return, second SCN invoking extended period is quite logical whereas in cases of wilful mis-statement regarding the clearances made under appropriate invoice and recorded in the periodic returns, second SCN invoking extended period would be difficult to sustain as the department comes in possession of all the facts after the time of first SCN. Therefore, as a matter of abundant precaution, it is desirable that after the first SCN invoking extended period, subsequent SCNs should be issued within the normal period of limitation."*

7.8 It is also observed that Hon'ble Apex Court in the case of **Nizam Sugar Factory-** 2008 (9) STR 314 (SC) at Para -9 has held that;

"9. Allegation of suppression of facts against the appellant cannot be sustained. When the first SCN was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second and third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the authorities. We agree with the view taken in the aforesaid judgments and respectfully following the same, hold that there was no suppression of facts on the part of the assessee/appellant. "

7.9 Once the issue of short payment of service tax on said services was in the knowledge of the department, then the onus to ascertain whether the appellant for the subsequent period was properly discharging the tax liability was on the department. The appellant is regularly filing ST-3 Returns and nothing is brought on record to establish the ingredients required to invoke extended period. Invoking extended period in the second SCN is logical where wilful mis-statement regarding taxable service rendered are not reported in the periodic returns. Second SCN invoking extended period would not sustain if the department comes in possession of all the facts after the time of first SCN. Once the facts are known to the department then periodical notice should have been issue under Section 73(4) of the Finance Act, 1994. In the circumstances, invoking the extended period of limitation in respect of subsequent periods by issuing the impugned show cause notices, on the plea of suppression of facts by the appellant when the facts were already in the knowledge of the Department, is not justifiable.

7.10 Thus, the present case would stand squarely covered by the above referred decision of Hon'ble Supreme Court inasmuch as, when the earlier show cause notices had been issued on same set of facts, the facts were within the knowledge of the Department. I, therefore, find that the demand for the remaining period (i.e. October, 2015 to March, 2017) is also not sustainable as suppression cannot be alleged in subsequent notice once the facts are known to the department.

8. In light of above facts, it cannot be held that appellant indulged in suppression of facts or had made any willful misstatement as is alleged by the Department. It rather stands clarified that the issue, as has been alleged as the violation on the part of the appellant, was in the knowledge of the Department since the November, 2015, when search was conducted. The present show cause notice covering subsequent period involving F.Y. 2014-15 to F.Y. 2016-17 has been issued on 29.09.2020, which is much beyond the permissible period of one year for the purpose as already discussed above, as there is no suppression of facts. Thus, I hold that the impugned show cause notice proposing service tax demand of Rs.1,30,67,488/- for the period covering F.Y. 2014-15 to F.Y. 2016-17 is barred by limitation.

9. In view of the above discussion and findings, I set-aside the demand of Rs. 1,30,67,488/- being time barred.

10. Accordingly, I allow the appeal preferred by the appellant by setting aside the impugned order.

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.

30.6.23

(शिव प्रताप सिंह)
आयुक्त (अपील्स)

Attested

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

Date: .7.2023

By RPAD/SPEED POST

To,
M/s. Rajdeep Project Force Pvt. Ltd.,
402, Ashatmangal Complex, Shahibaug,
Ahmedabad-380004

Appellant

The Joint Commissioner,
Central Tax, CGST & Central Excise,
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.

Received
Parmod Roy
Mr. Nilesh Mujar
19-7-23