



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
07926305065- टेलिफैक्स 07926305136



DIN:20230464SW000000C443

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/111/2023-APPEAL / 528 - 33
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-007/2023-24
दिनांक Date : 18-04-2023 जारी करने की तारीख Date of Issue 20.04.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 54-55/JC/LD/2022-23 दिनांक: 31.10.2022, issued by
Additional Commissioner, CGST, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s. Dhayan Fettling Contractor,
Nilay Complex, 09/C, Tulsi Park CHS Ltd.,
Nr. Sun Star Apartments, Sola Road,
Ahmedabad-380054

2. Respondent

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

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

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

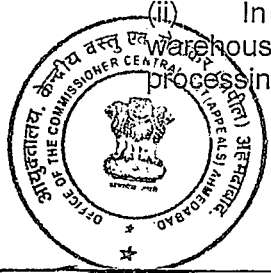
भारत सरकार का पुनरीक्षण आवेदन :
Revision application to Government of India :

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

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

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

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

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

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हों।

(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 ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अनील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता ई. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

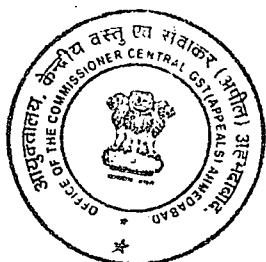
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

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



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(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 Appellate 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 अपील के मामले में कर्तव्य मांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

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

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

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

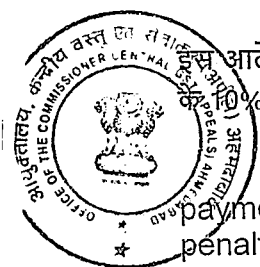
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

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

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

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

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



ORDER-IN-APPEAL

The present appeal has been filed by M/s. Dhayan Fettling Contractor, Nilay Complex, 09/C, Tulsi Park CHS Ltd., Nr. Sun Star Apartment, Sola Road, Ahmedabad - 380054 (hereinafter referred to as "the appellant") against Order-in-Original No. 54-55/JC/LD/2022-23 dated 31.10.2022 (hereinafter referred to as "the impugned orders") passed by the Joint 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 were holding Service Tax Registration No. AHPPP8289ESD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2014-15, FY 2015-16 & FY 2016-17, it was noticed that there is difference of value of service amounting to Rs. 1,78,28,720/- for the FY 2014-15; Rs. 3,66,04,979/- for the FY 2015-16 and Rs. 2,07,31,493/- for the FY 2016-17, between the gross value of service provided in the said data and the gross value of service shown in Service Tax return filed by the appellant. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but not paid the applicable service tax thereon. The appellant was called upon to submit clarification for difference along with supporting documents, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Therefore, the appellant were issued Show Cause Notice No. STC/15-66/OA/2020 dated 29.09.2020 demanding Service Tax amounting to Rs. 52,09,696/- for the period FY 2014-15 & FY 2016-17, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; penalty for late filing ST-3 returns under the provisions of Rule 7C of the Service Tax Rules, 1994; and imposition of penalties under Section 77(1), Section 77(2) & Section 78 of the Finance Act, 1994.

2.2 Subsequently, the appellant were issued another Show Cause Notice No. STC/15-136/OA/2021 dated 23.04.2021 demanding Service Tax amounting to Rs. 1,22,59,039/- for the period FY 2015-16 & FY 2016-17, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(2) & Section 78 of the Finance Act, 1994.

2.4 Both the aforesaid Show Cause Notices were adjudicated vide the impugned orders by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 1,05,17,418/-



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 2014-15 to FY 2016-17 and dropped the remaining demand of Service Tax. Further, (i) Penalty of Rs. 1,05,17,418/- was 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; (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994; and (iv) Penalty of Rs. 20,000/- was also imposed on the appellant under provisions of Rule 7C of the Service Tax Rules, 1994 for late filing of ST-3 return for the period April-2014 to September-2014.

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

- The appellant are engaged in providing services of manpower, mainly in Manpower Services for the period FY 2014-15 to FY 2016-17. The appellant was registered under the Finance Act, 1944 and holding Service Tax Registration No. AHPPP8289ESD001.
- The appellant has provided services to the body corporate, which has been taxable at the Rate of 25% for the service provider as per Notification No. 30/2012-ST dated 20.06.2012 during the FY 2014-15. During the FY 2015-16 & FY 2016-17, the services provided by the appellant to the body corporate falls under 100% RCM and the appellant were not liable to pay any service tax.
- The appellant have submitted the details and documents to the Department in response to Show Cause Notice No. STC/15-66/OA/2020 dated 29.09.2020. The appellant have submitted reply as on 15h May 2021 and submission of various data through e-mail as required by the officer.
- With regard the allegation in the impugned order that the appellant hadnot submitted details to prove that the service receiver is a corporate entity, the appellant submitted that they have submitted sale register, Service Tax return and 26AS with their reply dated 15.05.2021 to the SCN dated 29.09.2020. It is reflected in 26AS that the service receiver party of the appellant is Private Limited Company which is business entity registered as body corporate and it proves that the appellant is eligible to pay service tax on the service provided by them @ 25% for the FY 2014- 15 and not required to pay any service tax for the FY 2015-16 & FY 2016-17.

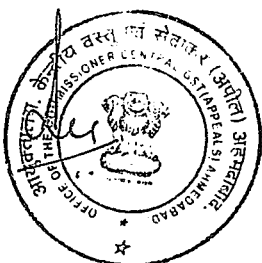


- They submitted reconciliation of Service Tax paid during the FY 2014-15, which is as under:

PARTICULARS	AMOUNT (in Rs.)
Total Income as per Profit and Loss Account	2,29,97,912
@25% of the total income	57,49,478
Service Tax on above @12.36%	7,10,635.50
Payment of Tax Date Wise	
04.04.2014	54,627/-
08.07.2014	76,286/-
09.07.2014	76,139/-
23.08.2014	54,328/-
11.09.2014	52,424/-
05.11.2014	1,18,829/-
05.01.2015	43,711/-
06.02.2015	55,589/-
06.02.2015	52,520/-
06.04.2015	1,20,208/-
06.04.2015	5,974/-
Total	7,10,635/-

- The appellants submit that for imposing penalty under Section 78(1) of the Act, there should be an intention to evade payment of service tax, or there should be suppression or concealment of material facts. The adjudicating authority has imposed penalty under Section 78 based on statement that, appellant has mis-stated the taxable value of the services provided/received by them and they have, knowingly and willfully not paid the correct amount of Service Tax leviable on such amount. However the appellant have provided all the details as and when desired by the Department to the Department and the appellant at no point of time had the intention to evade service tax or suppressed any fact willfully from the knowledge of the Department. Therefore, the penalty under Section 78 of the Act cannot be imposed on the appellant. In this regard, they relied upon the judgment in the case of M/s. Sainik Mining and Allied Services Ltd Vs Commissioner of S.T, Delhi [2019 (28) G.S.T.L. 156 (Tri. - Del.)]

4. Personal hearing in the case was held on 16.03.2023. Shri Dilip U. Jodhani, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He reiterated submission made in appeal memorandum.



4.1 The appellant, vide their email dated 23.03.2023, have submitted sample copies of Invoices for the FY 2014-15, FY 2015-16 and FY 2016-17 and also submitted copies of Income Ledgers for the FY 2014-15, FY 2015-16 and FY 2016-17.

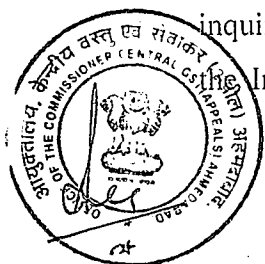
5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned orders passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period FY 2014-15 to FY 2016-17.

6. I find that in the SCNs in question, the demand have been raised for the period FY 2014-15 to FY 2016-17 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services under Sales / Gross Receipts from Services" provided by the Income Tax Department, no other cogent reason or justification is forthcoming from the SCNs for raising the demand against the appellant. It is also not specified as to under which category of service the non-levy of service tax is alleged against the appellant. Merely because the appellant had reported receipts from services, the same cannot form the basis for arriving at the conclusion that the respondent was liable to pay service tax, which was not paid by them. In this regard, I find that CBIC had, vide Instruction dated 26.10.2021, directed that:

"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.

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee."

6.1 In the present case, I find that letters were issued to the appellant seeking details and documents, which were allegedly not submitted by them. However, without any further inquiry or investigation, the SCNs have been issued only on the basis of details received from the Income Tax department, without even specifying the category of service in respect of



which service tax is sought to be levied and collected. This, in my considered view, is not a valid ground for raising of demand of service tax, specifically in the present case, when the appellant is already registered with the service tax department and were filing ST-3 Returns.

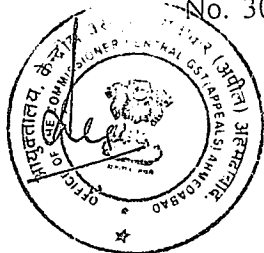
7. I find that the adjudicating authority had confirmed the demand of Service Tax under the impugned order observing as under:

"24. On perusal of the above Notification No.30/2012 dated 20.06.2012 and No. 07/2015-ST dated 01.03.2015, I find that if the service provider is individual/HUF/Proprietor/partnership Firm and service receiver is business entity registered as body corporate the liability to pay service tax on the service provider is 25% for the FY 2014-15 and no liability is on the service provider for the FY 2015-16 & 2016-17. In the instant case, the said assessee in their reply to SCNs claimed that they are covered under the Notification No.30/2012 dated 20.06.2012 and Notification No. 07/2015 dated 01.03.2015, however they have not produced any document like audited balance sheet, ITR, 26AS, Service Tax Return, copy of any ledger account, any agreement between the service receiver and assessee, any invoice, any proof of financial transaction, any document to prove that the service receiver is a corporate entity as envisaged in the Noti. No.30/2012 dated 20.06.2012. In the absence of the contract / agreement / document / other financial records as required. It is not possible to accept the claim of the assessee that they are entitled for the benefit under the said Notifications. The onus is on the assessee to prove that the service receiver is a corporate body as defined under the said Notification and accordingly the assessee is not liable to pay any service tax but the service receiver is the person liable for payment of service tax. It is also noticed that a number of opportunities have been given to the assessee to produce/present supporting documents to substantiate his claim that they are not liable to pay any service tax. The assessee was registered with Service Tax department and also aware that they have to file periodical ST-3 Returns until they surrender their Registration.

25. A taxable person is required to provide information/documents to the department. However in this case the said assessee failed to prove that they are not liable to pay service tax being the service tax provider. In view of the above facts, it is proved that the assessee may not have the data of the service receivers or they might have been try to avoid furnishing the details which may lead to proof that the service provider is liable to pay service tax. Consequently, this amounts to mis-declaration and willful suppression of facts with the deliberate intent to evade payment of Service Tax. Accordingly, the said assessee is liable to pay service tax on the services provided by them to various service receivers for the FY 2014-15, 2015-16 & 2016-17."

7.1 Hence, the adjudicating authority has denied the claim of exemption only on the ground of non-submission of documents.

8. It is observed that the appellant have filed their ST-3 Returns showing the taxable services as "Manpower Recruitment / Supply Agency Service" and claiming the exemption under Notification No. 30/2012-ST dated 20.06.2012 during the FY 2014-15, FY 2015-16 and FY 2016-17. The appellant have paid service tax during the FY 2014-15 on 25% of the value claiming exemption under Notification No. 30/2012-ST dated 20.06.2012. As per Notification No. 30/2012-ST dated 20.06.2012, as amended, if the service recipient is Body Corporate.



then the liability of paying Service Tax is @ 25% on service provider and @ 75% on recipient of service on reverse charge mechanism basis, during the FY 2014-15. With regard to FY 2015-16 and FY 2016-17, after amendment in Notification No. 30/2012-ST dated 20.06.2012 vide Notification No. 07/2015-ST dated 01.03.2015, the 100% liability of paying service tax have been shifted on the service recipient on reverse charge mechanism basis, if the service recipient is Body Corporate. It is also observed that the appellant is registered with the department and had filed ST-3 Returns regularly. The demand has been raised only on the basis of data received from the CBDT without conducting any verification.

9. On verification of the Form 26AS and Income Ledger for the FY 2014-15, I find that the appellant have received their total income of the FY 2014-15 i.e. Rs. 2,29,97,910/- from M/s. Flometallic India Pvt. Ltd.. Similarly, on verification of the Form 26ASs and Income Ledgers for the FY 2015-16 and FY 2016-17, I find that the appellant have received their total income from M/s. Flometallic India Pvt. Ltd. and M/s. Lava Cast Private Limited. Thus, I find that during the FY 2014-15 to FY 2016-17, who are falling under the category of body corporate. Thus, the appellant have provided their services to the body corporate only. On verification of the reconciliation statement and service tax payment ledger for the FY 2014-15 submitted by the appellant, I find that the appellant have correctly paid total Service Tax of Rs. 7,10,635/- on the total income of Rs. 2,29,97,912/- (@ 25% as per Notification No. 30/2012-ST). I also find that as the appellant have provided Manpower Services to the body corporate only during the FY 2015-16 & FY 2016-17. Therefore, the appellant is not required to pay any service tax on the income received by them during the FY 2015-16 and FY 2016-17.

10. In view of above, I hold that the impugned orders passed by the adjudicating authority confirming demand of Service Tax, in respect of Manpower Services provided by the appellant during the FY 2014-15 to FY 2016-17, are not legal and proper and deserves to be set aside. Since the demand of service tax is not sustainable on merits, there does not arise any question of charging interest or imposing penalties in the case.

11. In view of the above discussion, I set aside the impugned orders and allow the appeal filed by the appellant.

12. 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.



(Signature)
(Akhilesh Kumar)
18th April, 2023.
Commissioner (Appeals)

Attested

Date : 18.04.2023


 (R. C. Maniyar)
 Superintendent(Appeals),
 CGST, Ahmedabad

By RPAD / SPEED POST

To,

M/s. Dhayan Fettling Contractor,
 Nilay Complex, 09/C, Tulsi Park CHS Ltd.,
 Nr. Sun Star Apartment, Sola Road,
 Ahmedabad – 380054

Appellant

The Joint Commissioner,
 CGST& C. Excise,
 Ahmedabad North

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Joint Commissioner, CGST& C. Excise, Ahmedabad North
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North

(for uploading the OIA)

5) Guard File

6) PA file

