



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



**DIN: 20230964SW000000D971**

**स्पीड पोस्ट**

क फाइल संख्या : File No : GAPPL/COM/STP/247/2023-APPEAL 15352-61

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-92 /2023-24  
दिनांक Date : 28-08-2023 जारी करने की तारीख Date of Issue 05.09.2023

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

ग Arising out of Order-in-Original No. GST-06/D-VI/O&A/245/KURVE/AM/2022-23 दिनांक: 02.11.2022, issued by The Assistant Commissioner, CGST Division-VI, Ahmedabad North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant  
M/s. Kurve Construction Private Limited, 52, Sangini Bunglows, Opp. Sahajanand Bunglows, Sindhubhavan, Thaltej, Ahmedabad-380059

2. Respondent  
The Deputy/Assistant Commissioner, CGST, Division-VI, Ahmedabad North, 7th Floor, B.D. Patel House, Nr. Sardar Patel Statue, Naranpura, Ahmedabad- 380013

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

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

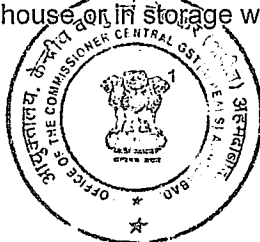
भारत सरकार का पुनरीक्षण आवेदन :  
Revision application to Government of India :

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

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

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

(ii) In case of any loss of goods where the loss occur in transit from a factory 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 इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

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

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

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

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

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

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

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

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



The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा 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 अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (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.

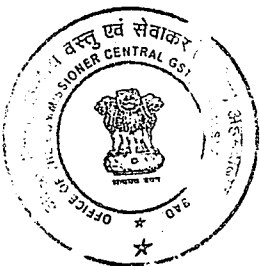
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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**

M/s. Kurve Construction Private Limited, 52, Sangini Bungalows, Opposite Sahajanand Bungalows, Sindhubhavan Road, Thaltej, Ahmedabad – 380059 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. GST-06/D-VI/O&A/245/Kurve/AM/2022-23 dated 02.11.2022 (hereinafter referred to as "*the impugned order*") passed by the Assistant Commissioner, Central GST, Division-VI, Ahmedabad North (hereinafter referred to as "*the adjudicating authority*"). The appellant were engaged in providing Works Contract Service and were holding Service Tax Registration No.AAECK1396CSD001.

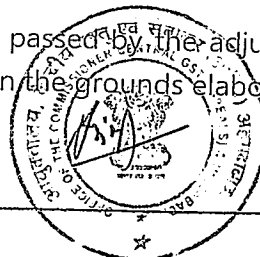
2. During EA 2000 Audit conducted by the officers of CGST Audit, Ahmedabad and as per Revenue Para-5 of FAR No. CE/ST-175/2021-22 dated 20.10.2021, following discrepancy was noticed.

**Revenue Para 5: Short payment of service tax on account of wrong claim of abatement on Works Contract Service (shown as original works instead of other than original works):** For the year 2016-17 and 2017-18 (upto June 2017), it was noticed that the appellant had paid service tax on some of its work order @40% of the contract value by availing the abatement of 60% of the contract value, claiming them as original work. However, on scrutiny of invoices/ bills, work order, their description and the nature of job done, it appeared that the job was in the nature of completion and finishing and not an original work. The work done is neither new construction nor erection, commissioning and installation work and the appellant had neither erected nor fabricated any new structure and the job was for completing and finishing work on an existing structure. Thus, they have wrongly availed the abatement benefit under Notification No. 24/2012-ST dated 06.06.2012. The work carried out by the appellant was in the nature of completion and finishing work and not 'original work'. Accordingly, the appellant was required to pay service tax on 70% of the contract value and not on 40% of the contract value, in terms of Rule 2A(ii)(B) of the Valuation Rules. Thus the total differential service tax payable @70% works out to Rs 13,63,963/-.

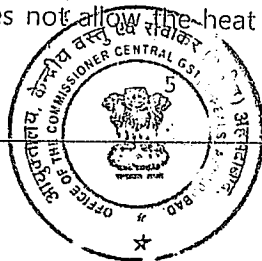
2.1 The above para was not admitted by the appellant, hence a notice bearing SCN No. CTA/04-803/Cir-VII/AP-45/2020-21 dated 20.10.2021, was issued to the appellant proposing Service Tax demand Rs. 13,63,963/- in terms of proviso of Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. Penalty under Section 78 of the Finance Act, 1994 was also proposed.

3. The said SCN was adjudicated vide impugned order and the Service Tax demand amounting to Rs.13,63,963/- proposed in SCN was confirmed along with interest. Penalty of Rs. 13,63,963/- was imposed on the appellant under Section 78(1) of the Finance Act, 1994 and penalty of Rs. 10,000/- under Section 77(1)(a) of the Finance Act, 1994 was also imposed on the appellant for failure to assess their correct service tax liability in terms of Section 70 of the Finance Act, 1994.

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

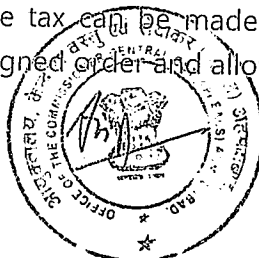


- They claim their services are squarely covered under the definition of Original Works hence taxable @40% value. Based on legal provisions contained in Rule 2A of Service Tax (Determination of Value) Rules, 2006, if any works contract is covered under definition of original work, then service tax is payable on 40% value. The sub-clause (B) of clause (ii) of Rule 2A of Service Tax (Determination of Value) Rules, 2006 is applicable only when any specific service is not covered in sub clause (A) since sub clause (B) itself starts with words "In case of works contract, not covered under sub clause (A). Consequently, if any particular service falls under sub clause (A) then there is no requirement to go to sub clause (B) and service tax is payable on 40% value. Appellant have provided works contract services in relation to original work which is evident from all the work order issued on Appellant and more precisely Appellant have executed original work in relation to erection, commissioning and installation of plant, machinery or equipment or structure which is specifically covered under clause (iii) of definition of original works.
- As per the work orders given to Appellant majorly, of the work performed is covered under definition of erection, commissioning or installation which is also part of definition of original works.
- Cement / gypsum / optra false ceiling for the purpose of thermal and / or sound insulation [Section 65(39a)(ii)(d)]
  - HVAC (Heating, Ventilation, Air conditioning) [Section 65(39a)(ii)(c)]  
Acoustic wall panelling for the purpose of sound insulation [Section 65(39a)(ii)(d)]
  - Electrical and electronic devices including wiring or fittings thereof [Section 65(39a)(ii)(a)]
  - Plumbing and other installations for transport of fluids [Section 65(39a)(ii)(b)]
  - Fire proofing and water proofing work [Section 65(39a)(ii)(d)]
- Some of the layman language terminology used in day-to-day commercial transactions which are covered under definition of erection, commissioning or installation under similar other technical terminology defined. In layman language word cement or gypsum false ceiling is used for thermal insulation for the purpose of safeguarding area from heating. Additionally, in common parlance acoustic word is being used for the purpose of sound insulation but in definition sound insulation has been used and not the acoustic word but meaning and purpose are one and the same only.
- False ceilings are used for thermal insulation. The air-filled gap between the two layers of ceilings cools the room down. False ceilings are suspended a few inches below the basic ceiling on a metal framework which can be made of any lightweight construction material like wood, plaster of Paris, plywood, gypsum, or cement sheet depending upon the budget or the requirement. Since there is a gap between these two layers, the air within gets trapped. Air, being a bad conductor of heat, does not allow the heat to flow into the room. This, in turn,



helps reduce electricity bills. Many of us are not aware that false ceilings also help with better optimization of air conditioning. Thus, false ceiling are used for thermal insulation [heat reduction] as well as for sound insulation.

- Acoustic Insulation is a type of sound proofing that attempts to prevent sound from entering or exiting an enclosed space by creating some a barrier between the interior and the exterior area. Because sound is able to travel in more than one fashion, the exact process and choice of materials used to manage sound insulation will vary.
  - The entire demand is raised by invoking the extended period of limitation under the proviso to Section 73 on the ground of alleged 'suppression'. Appellant have never suppressed any facts from the department. Reliance is placed on following decisions
    - *Uniworth Textiles Ltd. v. CCE* [2013] 39 STT 58/31 taxmann.com 67.
    - *Anand Nishikawa Co. Ltd. v. CCE* [2005] 2 TT 226,
    - *Infinity Infotech Parks Ltd. v. Union of India* [2015] 50 GST 622/55 taxmann.com 367
    - *Simplex Infrastructure Ltd. Vs. Commissioner of Service Tax, Kolkata -2016* (42) STR 634 (Calcutta)
  - Any order passed by Adjudicating Authority or any other higher authority which are non-speaking are bad in law. Adjudicating authority has very deliberately ignored the submissions and passed non-speaking order which is bad in law and against the natural justice and thus the said order is required to be set aside.
  - As there is no tax payable by us, there is no liability on account of interest and the said demand is required to be obliterated. Also when there is no tax payable there remains no question of imposing penalty and the said demand is required to be obliterated.
  - It is a settled rule that an order cannot travel beyond the scope of show cause notice. Penalty u/s 77(1)(a) was never demanded in show cause notice and accordingly it cannot be part of an order and accordingly by this reason alone, no demand of penalty u/s 77(1)(a) is sustainable.
5. Personal hearing in the matter was held on 18.08.2023. Shri Meet M. Jadawala, Chartered Accountant, appeared for personal hearing and reiterated the submissions made in the appeal. He submitted that the appellant provided installation of acoustic work in the auditorium, theatre etc for the client which is nothing but sound insulation installation. The same being original work is eligible for 60% abatement. However, the original authority has considered the same as other than original work and has allowed only 30% abatement. He stated that the work rendered by the appellant was original work. He also submitted that the dispute being related to rate of abatement, no allegation of suppression or motive to evade tax can be made against the appellant. Therefore, he requested to set-aside the impugned order and allow the appeal.



6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as the submissions made during personal hearing. The issue to be decided in the present case is whether the service tax demand of Rs. 13,63,963/- alongwith interest and penalties confirmed in the impugned order, in the facts and circumstances of the case, is legal and proper or otherwise?

6.1 From the facts of the case and the summary provided by the appellant, it appears that the appellant have provided following works:-

**Table-A**

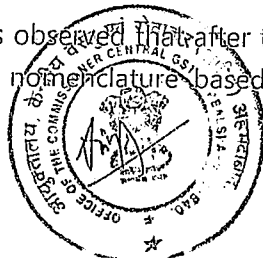
(A)	Nature of Work where Tax required to be paid @ 40%	(B)	Nature of Work where Tax require to be paid @ 70%
1	Cement sheet false ceiling /False ceiling	1	Supply & applying toughened glass
2	False Flooring	2	Providing & fixing dark film windows
3	Gypsum & Optra False Ceiling	3	Providing & fixing Aluminum
4	HVAC (Heating, Ventilation, Air Conditioning) Acoustic Wall Panelling	4	Innovative Glass Fabric Wall
5	Stage Curtain, AV system, Colour Work, etc	5	Curtains, Carpet , sofa
6	Thermal insulation & Sound insulation		
7	Civil Work Plumbing		

6.2 The appellant claim that the services listed in column (A) above are covered under the definition of 'Original Work' as was executed in relation to erection, commissioning and installation of plant, machinery or equipment or structure which is covered under clause (iii) of definition of original works, hence the tax is leviable on 40% of the taxable value. Further, in respect of services covered in column (B) above, they have admitted that they are liable to pay service tax on 70% of the taxable value.

6.3 However, the adjudicating authority by relying on the work carried out by the appellant for M/s. Ganpat University and M/s. Freight Systems (India) Pvt. Ltd had observed that the appellant has carried out Works Contract service by way of finishing works like installation of electrical fittings, flooring/wall tiling etc which is covered under Rule 2A (ii) (B) of the Service Tax Determination Rules, 2006. He, therefore, held that the appellant was liable to pay tax on 70% of the value of taxable service instead of 40% of the taxable value. The tax was thus confirmed on the differential value.

7. It is observed that the appellant have heavily relied on Section 65 (39a) which defines 'erection, commissioning or installation of plant, machinery, equipment or commission and installation agency'. They claim that the above works carried out by them are covered under sub-clause (a), (b), (c) or (d) of clause (ii) of the definition hence is a part of definition of original work.

7.1 It is observed that after the introduction of negative list, with effect from 1<sup>st</sup> July, 2012, the nomenclature based classification of service tax was done away with and



'service' was specifically defined under Section 65B (44) of the Finance Act, 1994, which read as:

*(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include -*

- (a) an activity which constitutes merely, -*
  - (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or*
  - (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or*
  - (iii) a transaction in money or actionable claim;*
- (b) a provision of service by an employee to the employer in the course of or in relation to his employment;*
- (c) fees taken in any Court or tribunal established under any law for the time being in force.*

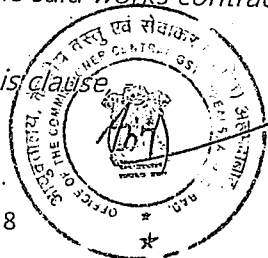
7.2 Further, clause (55) of Section 65B defines 'Works Contract' as a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any moveable or immovable property or for carrying out any other similar activity or a part thereof, in relation to such property. Since the new definition of works contract, after 01.07.2012, includes the services related to movable properties also, but to fall under the said definition of works contract service, there should be transfer of property in goods, which are involved in the execution of such contract and are leviable to tax as sale of goods.

7.3 The department has not disputed the fact that the appellant was rendering Works Contract service. Therefore, the only dispute remains is whether the works contract service rendered by the appellant is classifiable as 'Original Works' and whether they are eligible for 60% abatement in terms of Rule 2A (ii) A of the Service Tax (Determination of Value) Rules, 2006, as claimed by the appellant. To examine the issue relevant Clause 2(ii) of Rule 2A of the Service Tax (Determination of Value) Rules, 2006, is reproduced below:-

**"2A- Determination of value of service portion in the execution of a works contract** - Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely :-

- (i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract.*

Explanation. - For the purposes of this clause





XXX

(ii) Where, the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely :-

- (A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent of the total amount charged for the works contract;
- (B) in case of works contract, not covered under sub-clause (A), including works contract entered into for, -
  - (i) maintenance or repair or reconditioning or restoration or servicing of any goods, or
  - (ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property, service tax shall be payable on seventy per cent of the total amount charged for the works contract;
- (C) in case of other works contracts, not covered under sub-clauses (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property, service tax shall be payable on sixty per cent of the total amount charged for the works contract;

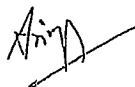
Explanation 1. - For the purposes of this rule, -

- (a) "original works" means -
  - (i) all new constructions;
  - (ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
  - (iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;"

Thus, the definition of 'original work' covers work in relation to erection, commissioning or installation of plant, machinery or equipment or structure, whether pre-fabricated or otherwise.

7.4 It is observed that the appellant have carried out following nature of works:-

- a) False Ceiling, False Flooring for Torrent Power Ltd;
- b) Work of HVAC, Acoustic Wall Paneling, False Ceiling, False Flooring, installing AV system, Colour work for M/s, Ganpat University;
- c) Work related to Acoustic Work, False Ceiling, Wall Cladding (Thermal & Sound Insulation) for M/s. Adani Township & Real Estate Company Pvt. Ltd.;



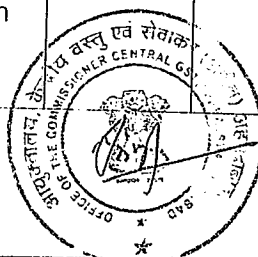
- d) Work related to supplying & applying Toughened glass done for M/s. Bharat Heavy Electricals;
- e) Providing & Fixing Dark Films for M/s. Grazino Transmission;
- f) Providing & Fixing Aluminum Windows for M/s. Hubtown Bus Terminal Pvt. Ltd.;
- g) False Ceiling for M/s. IOT Infrastructure & Energy Service Ltd;
- h) Thermal Insulation for M/s. Vijay Vaibhav Construction;
- i) **Innovative Glass Fabric, Curtain, Carpet, sofa for M/s. Cairn India Ltd.**
- j) Civil Work, Plumbing Work, False Ceiling, Flooring Work for M/s. Freight Systems (India) Pvt. Ltd.

7.5 I find that the False Ceiling, False Flooring, Thermal Insulation, Sound Insulation, installing A.V system, Supplying & Installing, Testing, Commissioning of HVAC (Heating, Ventilation and Air Conditioning), Acoustic Wall Paneling work for theater etc are covered under installation of structure or equipment hence covered under clause (iii) of definition of original work. Further, the Civil Modification Work and Plumbing work carried out by the appellant are covered under clause (ii) of the definition of original work. Thus, I find that the services listed at Sr. No. (a), (b), (c), (g), (h) and (j) are clearly covered under the scope of 'original work' defined in Rule 2A of the Rules, *ibid*. Hence, on such services the appellant is eligible for abatement of 60% and is required to discharge the tax liable on only 40% of the taxable value.

7.6 However, in respect of services like supplying and applying fixing Toughened glass; providing & Fixing Dark Films, Providing & Fixing Aluminum Windows listed at Sr. No. (d), (e), (f) and (i) above, I find the same cannot be considered as plant, equipment, machinery or structure hence shall not be covered under the definition of 'original works'. I, therefore, find that these activities shall be covered under '*maintenance or repair or reconditioning or restoration or servicing of any goods*'; hence the tax liability shall be on 70% of the taxable value. Further, the appellant are also not contesting this aspect and have admitted their tax liability on above services to that extent. The break-up of the taxable value of said works contract is detailed below:-

Table-A

<u>Works Orders where liability is on 70% of the taxable Value</u>					
<i>Date</i>	<i>Service recipient</i>	<i>Nature of Work</i>	<i>Taxable Value</i>	<i>Value on 70% of the Value</i>	<i>S.tax liability @15% rate of tax</i>
09.06.2016	Bharat Heavy Electricals Ltd.	Supply & applying Toughened glass	71866	50306	7546
05.08.2016	Graziano Transmission India Pvt. Ltd.	Providing & fixing dark film	31200	21840	3276



13.10.2016 and 28.06.2017	Hubtown Bus Terminal (Mahesana) Pvt. Ltd.	Providing & Fixing Aluminium windows	780066	546046	81907
16.3.2017, 16.3.2017 & 23.03.2017	Cairn India Limited	Innovative Glass Fabric Wall, Curtain, carpet, sofa	942100	659470	98921
		<b>Total</b>	<b>1825232</b>	<b>1277662</b>	<b>191649</b>

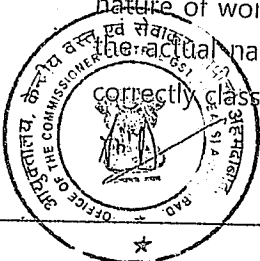
**Table-B**

Gross Taxable Value as per SCN	Abatement @30%	Taxable Value (@ 70%)	Service tax to be paid on the value shown in column (3)	S.Tax paid as per ST-3 Return	Difference in S.tax liability
1	2	3	4	5	6
30758366	9227510	21530856	3229628	1865665	1363963

Value as per Table -A	Taxable Value (@ 40%)	Taxable Value (@ 60%)	Service tax paid by appellant on the 40% of the value shown in column (8)	Taxable Value (@ 70%) of column (7)	Service tax required to be paid on the value shown in column (11)	Difference in S.tax liability
7	8	9	10	11	12	13
1825232	730093	1095139	109514	1277662	191649	82135

7.7 In light of above calculation, I find that the appellant is liable to discharge the tax liability of Rs.82,135/- on the taxable value of services listed at Table-A above. The appellant has already discharged the service tax liability on 40% of the taxable value after availing the abatement of 60% of the total value (as mentioned in the Revenue Para and Para-3 of the impugned order. Hence, I find that the tax liability shall accrue only on the differential value on which tax has not been paid which come to Rs.82,135/-.

8. Further, I find that the argument of demand being time barred is not maintainable. In the ST-3 return, the assessee is required to disclose the total value of service which includes the exemption/abated value of services and also the exempted/abated value of services before computing the service tax. The demand in the instant case was raised by Auditor on scrutiny of the Work Orders, their description and nature of work done etc. Mere disclosure of abatement in ST-3 Return may not reflect the actual nature of service rendered. It is the obligation of the service provider to correctly classify the services in order to assess their actual tax liability. The appellant is

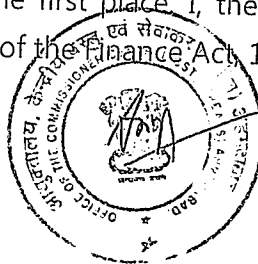


registered under Works Contract Service and has availed inadmissible abatement in their ST-3 return. Wrong classification of service came to the notice of the department only during audit, which definitely brings out the suppression and malafide intention to evade taxes. I, therefore, do not find merit in the above contention and hold the same as untenable. The onus to disclose full and correct information about the value of taxable services lies with the service provider. The assessee pays the tax on self assessment basis and files the ST-3 returns, which is a report of transactions and a basic document, hence they are duty bound to disclose all and correct information in the ST-3 returns. Non disclosure of full and correct information in returns would amount to suppression of facts. Non-payment of tax, by classifying the service under wrong head and thereby claiming ineligible abatement clearly establishes the conscious and deliberate intention to evade the payment of service tax. I, therefore, find that all these ingredients are sufficient to invoke the extended period of limitation provided under proviso to Section 73(1) of the F.A, 1994.

9. In light of above discussion, I find that the demand of **Rs.82,135/-** is sustainable on merits as well as on limitation. When the demand sustains there is no escape from interest, hence, the same is therefore also recoverable under Section 75 of the F.A., 1994. Appellant by failing to pay service tax on the taxable service are liable to pay the tax alongwith applicable rate of interest.

10. I find that the imposition of penalty under Section 78 is justifiable as it provides penalty for suppressing the value of taxable services. I find that the appellant has evaded the service tax by availing inadmissible abatement in the ST-3 Returns filed for the F.Y. 2016-17 and 2017-18, which has led to suppression of actual taxable value and tax liability. I, therefore, find that the penalty imposed under Section 78 is also justifiable as it provides for penalty for suppressing the value of taxable services. The crucial words in Section 78(1) of the Finance Act, 1994, are '*by reason of fraud or collusion*' or '*willful misstatement*' or '*suppression of facts*' should be read in conjunction with '*the intent to evade payment of service tax*'. Hon'ble Supreme Court in case of *Union of India v/s Dharamendra Textile Processors* reported in [2008 (231) E.L.T. 3 (S.C.)], considered such provision and came to the conclusion that the section provides for a mandatory penalty and leaves no scope of discretion for imposing lesser penalty. As the demand was raised based on the audit objection and it is the responsibility of the appellant to correctly assess and discharge their tax liability. If any of the ingredients of proviso to Section 73(1) of the Finance Act, 1994 are established the person liable to pay tax would also be liable to pay a penalty equal to the tax so determined.

11. As regards the imposition of penalty under Section 77(1)(a), I find that the same is not imposable as the notice does not propose any such penalty. Thus, I find that the adjudicating authority has travelled beyond the scope of the notice by imposing a penalty which was never proposed at the first place. I, therefore, drop the penalty of Rs.10,000/- imposed under Section 77(1) of the Finance Act, 1994.

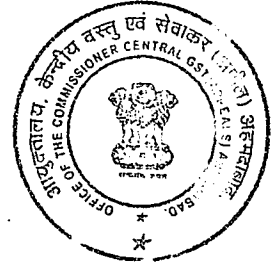


12. In view of the above discussion, Uphold the tax liability of Rs.82,135/- alongwith interest and penalty under Section 78.

13. 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.

(शिव प्रताप सिंह)  
आयुक्त (अपील)

Date: 9.2023



Attested

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

By RPAD/SPEED POST

To,  
M/s. Kurve Construction Private Limited,  
52, Sangini Bunglows,  
Opposite Sahajanand Bunglows,  
Sindhuhavan Road, Thaltej,  
Ahmedabad - 380059

Appellant

The Assistant Commissioner,  
CGST, Division-VI, Ahmedabad North  
Ahmedabad

Respondent

Copy to:

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



