



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: 20230964SW0000056980

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1531 /2023-APPEAL /6509 - 13
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-97/2023-24
 दिनांक Date : 28-08-2023 जारी करने की तारीख Date of Issue 26.09.2023
 आयुक्त (अपील) द्वारा पारित
 Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 47/AC/DEMAND/22-23 दिनांक: 31.5.2022 , issued by
 The Assistant Commissioner, CGST Division-I, Ahmedabad North
- ध अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

Navin Bhogilal Patel, A-504, Radhe Sky Line, Opp. Venice Bungalows, 100 Ft. Ring Road, Ahmedabad - 382340

2. Respondent

The Assistant Commissioner, CGST Division-I, Ahmedabad North, Ground Floor, Jivabhai Mansion, Ashram Road, 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) केंद्रीय 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 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, अपीलों के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिरस्टेट) 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 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 (रिस्ट्रेट), 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.

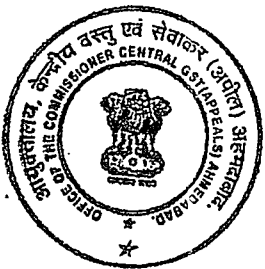
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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. Navinbhai Bhogilal Patel, N-11, Sodhan Nagar, Opposite Adarsh School, Kubernagar, Ahmedabad-382340 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 47/AC/Demand//2022-23 dated 31.05.2022, (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VII, Ahmedabad North Commissionerate (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable services but were not registered with the Service Tax Department. They are holding PAN No. AYVPP7554K.

2. The facts of the case, in brief, are that based on the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15 it was noticed that the appellant had earned substantial income by providing taxable services. The appellant has neither obtained Service Tax Registration nor paid service tax on such income. After the negative list regime all services are taxable except those covered under negative list. Letters were, therefore, issued to the appellant to provide the details of the services provided during the F.Y. 2014-15 and explain the reasons for non-payment of tax and provide certified documentary evidences for the same. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. Therefore, the income reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)" or "Total Amount paid / credited under Section 194C, 194I, 194H, 194J (Value from Form 26AS)" of the Income Tax Act, 1961, was considered as a taxable value.

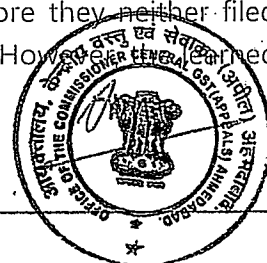
Sr. No.	F.Y.	Value from ITR or Value of Form 26AS	Service Tax rate	Service Tax Payable
01	2014-2015	27,06,843/-	12.36%	3,34,566/-

2.1 A Show Cause Notices (SCN) bearing No. AR-III/NavinbhaiBhogilalPatel/S.T./UnReg/2014-15 dated 29.09.2020 was issued to the appellant proposing recovery of service tax of Rs. 3,34,566/- along with interest, not paid on the value of income received during the F.Y. 2014-15 under Section 73(1) and Section 75 of the Finance Act, 1994. Imposition of penalties under Section 77 and under Section 78 of the Finance Act, 1994 were also proposed.

3. The SCN was adjudicated vide the impugned order wherein the total service tax demand of Rs.3,34,566/- was confirmed alongwith interest. Penalty of 10,000/- each was imposed under Section 77 and penalty of Rs.3,34,566/- was also imposed under Section 78 of the Finance Act.

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

- The Appellant have neither received the show cause notice nor received any intimation scheduling the date of personal hearing, therefore they neither filed their written submission nor could attend personal hearing. However, they earned



adjudicating authority issued the impugned order on ex-parte basis, which is in gross violation of principal of Natural Justice.

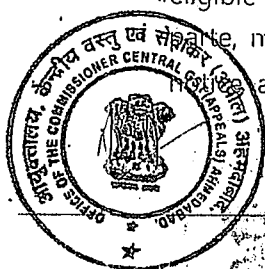
- The show cause notice was issued only on the presumption that income declared by the appellant is related to taxable service. The appellant was under the bona-fide belief that they are engaged in the works contract services defined in Section 65B(54) of the Finance Act, 1994 and covered as a declared service specified in Section 66(E)(h) of the Finance Act, 1994 and is taxable service.
- They claim that they are engaged in the business of Works Contract Services with materials. They submitted profit and loss account for the year 2013-2014 and 2014-15 to show that the appellant purchasing various materials and use the same in for the customers. The claim that on conjoint reading of Section 65B(54) and Section 66E(h) of the Finance Act, 1994 reveals that the activities of the appellant is a declared service and only service portion in execution of such works contract is liable to service tax in terms of Section 66B of the Finance Act, 1994.
- In terms of Rule 2A of Service Tax (Determination of Value) Rules, 2006, the value for the purpose of charging service tax has to be considered as an abated value of 40% of the contract value as the Appellant is engaged in provisioning of service of color, putty, POP, etc. and is covered original works.
- From the Profit and loss account, the abated value @ 40% for the year 2013-14 and 2014-15 are worked out to as under.

Year	Income as per P&L	40% abated value
2013-14	21,43,426	8,57,370
2014-15	27,06,843	10,82,737

The above table shows that taxable income for the year 2013-14 is Rs.8,57,370/- and that for the F.Y. 2014-15 is Rs.10,82,737/-. The present demand confirmed for the year 2014-15 is therefore erroneous and legally not sustainable in terms of Notification No.33/2012-ST, as the aggregate taxable value in the preceding financial year is below Rs.10 Lakhs.

- They are also eligible for the benefit of cum-duty calculation on the amount exceeding the threshold limit during F.Y 2014-2015 which is at present not extended to them.

5. Personal hearing in the matter was held on 31.07.2023. Shri Pravin Dhandharia, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the appeal. He submitted that the appellant provided works contract services in respect of painting of residential house/offices buildings, where service is provided alongwith materials by the appellant. Therefore, the appellant is eligible for abatement. The adjudicating authority has passed the impugned order ex-parte, merely on the basis of Form-26AS and ITR data, without any verification. The proceedings initiated merely based on ITR data without any further



investigation are un-sustainable, as has been held by Tribunal. Further, the demand for first half of the Financial Year 2014-15 as per SCN issued in 2020 is beyond five years extended period. After applying abatement, threshold exemption and excluding the first half period of F.Y. 2014-15, the remaining demand is below Rs.10 lakhs. Therefore, he requested to set-aside the impugned order.

5.1 The appellant vide letter dated 31.07.2023, also filed additional submission stating that the demand pertaining to period April, 2014 to September, 2014, is time barred. Due date for filing ST-3 Return for said period was 25.10.2014 which was extended to 14.11.2014 vide Notification No.02/2014-ST. Thus, the SCN was to be issued by 13.11.2019 but the same was issued on 29.09.2020, hence demand for said period is time barred. They also submitted sample receipts to prove that the work being carried out is of Works Contract Services which includes with material.

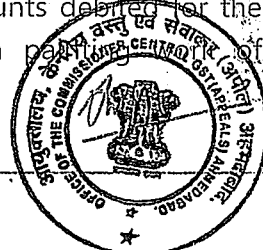
6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum, additional submissions as well as the submissions made at the time of personal hearing. The issue to be decided in the present case is as to whether;

- a) The service tax demand of Rs.3,34,566/- 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 notice dated 29.09.2020 issued to the appellant covering the period from April, 2014 to September, 2014 is barred by limitation or otherwise?

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

6.1 It is observed that the entire demand has been raised in the SCN based on the income data shared by the CBDT, on which no service tax was paid by the appellant. As the appellant was not registered with the department, they were requested to submit the documentary evidence in respect of their income. They however failed to submit the required details /documents called for and also failed to offer any explanation before the adjudicating authority either by filing a defense reply or appearing for the personal hearing. The case was therefore decided ex-parte. However, now before the appellate authority, the appellant have submitted copy of Form-26 AS, ITR-Return, Balance Sheet, Profit & Loss Account, Sample Sale Invoices for the F.Y. 2014-15 to support their contention that the differential income earned was pertaining to the Works Contract Service. The appellant in their additional submission have also stated that if their contention for original work is not considered then the valuation of taxable service may be considered in terms of Rule 2A(i) of Service Tax (Determination of Value) Rules, 2006.

6.2 I have gone through the above documents submitted by the appellant. On going through the documents, I find that the appellant for the F.Y. 2014-15, in the ITR have shown the income of Rs.27,06,843/- under Work Contract Income. They also submitted the Work Contract Leger Account and the material Ledger account for the said period showing the payment received for services rendered and the amounts debited for the material purchased. They also claim that they are engaged in painting work.



commercial and residential units and purchase various materials and used them for the customer.

6.3 In terms of Clause (54) of Section 65B, the term Works Contract is defined as;

(54) "works contract" means 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 movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;

The works contract includes transfer of property in goods in the execution of such contract on which sales tax /VAT is leviable. The appellant claim that they are engaged in providing service of color, putty, POP etc which is covered under 'original work'. The painting work or POP work includes sale of goods as the paint or POP material are purchased and sold to the client while rendering the service. The appellant have produced ledgers, bank statements to prove the purchase and sale of material. Further in their Profit & Loss Income they have shown income under the head Works Contract and the ledgers show the purchase of material. As regards the payment of VAT is concerned they claim the same may not be levied considering the value of goods but that does not deny the fact that the goods were not sold while rendering the service to the service recipient.

6.4 I find that completion, repair, maintenance, renovation of immovable property is covered under Works Contract. Now the question arises whether the said work can be considered as 'original works'. The appellant have claimed that the said activity is covered under 'Original Works'. It is observed that Works Contract Services includes all types of works contracts relating to movable & immovable property and covers different other services like Commercial or Industrial Construction service, Construction of Residential Complex Service, Repair & Maintenance Service, Labour Supply Services, Commissioning & Installation Service, etc, therefore a new term 'Original Work' was coined in relation to specified works contracts and has been defined under SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006. In terms of Rule 2(A) of the said Rules, the determination of value in the execution of a works contract shall be;

RULE [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 [or in goods and land or undivided share of land, as the case may be] transferred in the execution of the said works contract.

Explanation. - For the purposes of this clause,-

(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of goods involved in the execution of the said works contract;



- (b) value of works contract service shall include, -
- (i) labour charges for execution of the works;
 - (ii) amount paid to a sub-contractor for labour and services;
 - (iii) charges for planning, designing and architect's fees;
 - (iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
 - (v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;
 - (vi) cost of establishment of the contractor relatable to supply of labour and services;
 - (vii) other similar expenses relatable to supply of labour and services; and
 - (viii) profit earned by the service provider relatable to supply of labour and services;
- (c) where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause;
- (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;

[Provided that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty 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, -

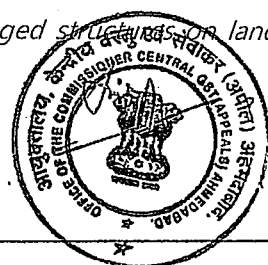
- (i) maintenance or repair or reconditioning or restoration or servicing of any goods; or
- (ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property,

service tax shall be payable on seventy per cent. of the total amount charged for the works contract.]

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;

(b) "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services, if any; and

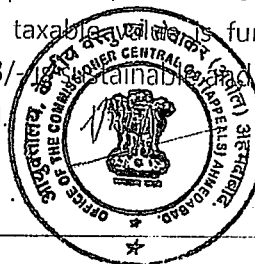
(ii) the value added tax or sales tax, if any, levied thereon ;

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

6.5 In the present case the appellant could not produce any documentary evidence like works contract to substantiate that they were engaged in new construction or engaged in carrying out any additions and alterations to abandoned or damaged structures on land to make them workable or engaged in erection, commissioning or installation of machinery or structure. Thus, I find that the work carried out by them does not fall under Original Works.

6.6 However, the appellant have raised invoices charging labour charges and the goods /material purchased for carrying out the painting work wherein the goods were transferred to their clients. Thus, I find that the value of such materials transferred in execution of works contract shall not be included in the gross value. In terms of Rule 2A(i), the 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 [or in goods and land or undivided share of land, as the case may be] transferred in the execution of the said works contract. The gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract. The appellant in the instant case have collected charges for the material purchased and transferred it to their clients and also collected labour charges for the painting work. Accordingly, I find that they are liable to discharge service tax only on the labour charges excluding the cost of material transferred in execution of such contract.

7. Further, the appellant have strongly contended that the notice covering demand for the period from April, 2014 to September, 2014 is barred by limitation. I find that the appellant have not obtained registration hence have not filed the statutory returns. The ST-3 for 1st H.Y. was required to be filed on 25th October, 2014 which was extended to 14th November, 2014 vide Order No. 02/2014-ST dated 24.10.2014. Considering, 5yrs period from the due date of filing, the demand notice for 1st H.Y should have been issued latest by 13th November, 2019. Whereas, the present notice was issued on 29.09.2020, hence, I find that the demand for this period is hit by limitation, hence time bar. However, the demand for the remaining period i.e. from October, 2014 to March, 2015, has been issued well within the period of limitation. I, therefore, find that the demand notice covering period from April, 2014 to September, -2014 is not sustainable in law hence set-aside on limitation. Break-up of the taxable value is furnished below. Thus, I find that the taxable value of only Rs.10,77,043/- is sustainable and the service tax demand on the value of Rs. 16,29,800/- is time barred.



Period		Sales Value	Material Value	Net Value
April,2014	to	16,29,800/-	8,36,500/-	Time barred
Sept,2014				
October,2014	to	10,77,043/-	9,95,965/-	81,078/-
March,2015				

7.1 Thus, I find that the appellant is liable to pay service tax only on the net value which comes to Rs.81,078/- .

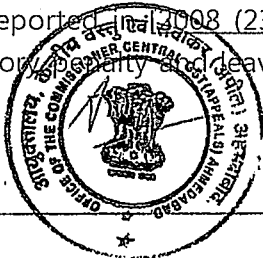
8. Further, the appellant have claimed that during the F.Y. 2013-14, the taxable income as per P&L was Rs.21,43,426/- and after considering the abatement of 40% under original work, the taxable income shall be Rs.8,57,370/- which they claim is below the threshold limit of Rs.10 lakhs. They claim that in terms of Notification No.33/2012-ST, the current demand for the F.Y. 2014-15 shall not sustain as they are eligible for Small Scale Service Providers exemption. I find that Notification No. 33/2012-ST dated 20.06.2012, exempts the taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under Section 66B of the said Finance Act. On going through the ITR and Balance Sheet for the F.Y. 2013-14, it is observed that the appellant have shown the income of Rs.21,43,426/- under Works Contract. As the service rendered by the appellant fall under the scope of Works Contract Service, I find that after granting 30% abatement to them, the taxable income shall be Rs.15,00,398/-, which I find is more than the threshold limit exemption. As the taxable income for the F.Y. 2013-14 is above the threshold limit of Rs. 10 Lakhs, the appellant is not exempted from the tax liability arrived for the F.Y. 2014-15.

9. Another contention put forth by the appellant is that they are eligible for the benefit of cum-duty calculation on the tax determined. I, agree with their above contention. After granting the cum tax benefit, I find that the tax liability shall come to Rs.8,918/-. Detail calculation is given below:-

Tax after granting Cum Tax Benefit							
Sr.	Name of the Service	Year	Gross Value	Net Value	Service tax rate	Taxable Value (Gross Value*100 /112.36)	S.Tax Payable
1	Works Contract	2014-2015 (Oct to March)	10,77,043	81,078/-	12.36%	72,159/-	8,918/-

10. When the demand sustains there is no escape from interest, the same is therefore recoverable with applicable rate of interest on the tax held sustainable in the para supra.

11. I find that the imposition of penalty under Section 78 is also justifiable as it provides penalty for suppressing the value of taxable services. Hon'ble Supreme Court in case of *Union of India v/s Dharamendra Textile Processors* reported in 2008 (231) E.L.T. 3 (S.C.)], concluded that the section provides for a mandatory penalty of 10% leaves



no scope of discretion for imposing lesser penalty. I find that the appellant was rendering a taxable service but did not obtain registration and neither filed the statutory returns. This act thereby led to suppression of the value of taxable service and such non-payment of service tax undoubtedly brings out the willful mis-statement and fraud with intent to evade payment of service tax. If any of the circumstances referred to in Section 73(1) are established, the person liable to pay tax would also be liable to pay a penalty equal to the tax so determined.

12. As regards, the imposition of penalty under Section 77 (1) is concerned; I find that the same is also imposable. The appellant were rendering the taxable service and were liable to pay service tax, however, they failed to self-assess their tax liability. As such they failed to obtain registration and thereby failed to file ST-3 Return. I, therefore, find that all such acts make them liable to a penalty. However, considering the reduction in tax liability, I reduce the penalty imposed under Section 77(1) of the Finance Act, 1994 from Rs.10,000/- to Rs.1,000/-.

13. In view of the above discussion, I partially uphold the impugned order confirming the service tax demand of Rs.8,918/- pertaining to the period from October, 2014 to March, 2015, alongwith interest and penalties.

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 (अपील्स)

Date: 28.08.2023

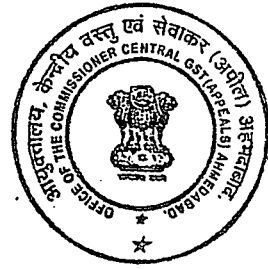
Attested

Rekha Nair

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

By RPAD/SPEED POST

To,
M/s. Navinbhai Bhogilal Patel,
N-11, Sodhan Nagar,
Opposite Adarsh School,
Kubernagar,
Ahmedabad-382340



Appellant

The Assistant Commissioner
CGST, Division-I (Naroda),
Ahmedabad North

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.



