



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
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स्पीड पोस्ट

- क फाइल संख्या : File No : V2(ST)92/Ahd-South/2019-20 / 14899 to 14903
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-001-APP-125-2019-20**
दिनांक Date : **20-03-2020** जारी करने की तारीख Date of Issue **23/06/2020**
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **MP/01/Dem.2019-20** दिनांक: **22.05.2019** , issued by Deputy Commissioner, Div-V, Central Tax, Ahmedabad-South
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Karnavati Engineers
Ahmedabad

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 हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित 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 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 पढी 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.

- (6) 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।

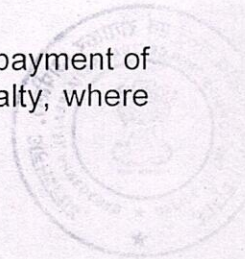
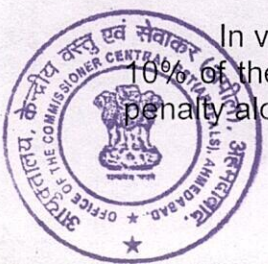
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

This order arises on account of an appeal filed by M/s Karnavati Engineers, Plot No.8, Road No.1, Kathwada GIDC, Kathwada, Ahmedabad (in short '*appellant*') against the Order-in-Original No.MP/01/Dem.2019-20 dated 16.05.2019 (in short '*impugned Order*') passed by the Deputy Commissioner, CGST Division- V, Ahmedabad South (in short '*the adjudicating authority*').

2. Facts of the case, in brief, are that the appellant is a service provider holding Service Tax Registration No.ABGPT1205MST001. During the course of audit of the records of the appellant by the department, it was noticed that they had provided labour services under category of 'Erection, Commissioning and Installation Service' to contractors such as Larsen & Toubro Limited, Rajkot/Godhra/Sanand, etc. as sub-contractor and they had not paid service tax on the said services provided to the main (original) contractor claiming benefit of exemption Notification No.25/2012-ST dated 20.06.2012 which appears to be not admissible due to clarification by Board vide Circular No.138/7/2011-ST dated 06.05.2011. Based on the above audit observation, the matter was inquired by the HQ Preventive Section of erstwhile Service Tax Ahmedabad Commissionerate and Central Excise, Ahmedabad-I Commissionerate (now Ahmedabad South Commissionerate) which culminated into issuance of Show Cause Notice F.No.IV/13-3/PI-III/16-17 dated 28.03.2018 (in short '*SCN*') to the appellant demanding Service Tax to the tune of Rs.11,66,604/- along with interest and proposing penalties. The said SCN was adjudicated by the adjudicating authority vide the impugned Order confirming the demand along with interest and imposing penalties under Section 77 and 78 of the Finance Act, 1994 (in short '*the Act*').

3. Feeling aggrieved with the above Order, the appellant has filed the present appeal, mainly on the following grounds :

- (i) The work awarded to the appellant by the Contractors involved fabrication/civil construction of structures such as Walkways, Lifts, Canopy, Railing, Roofings, etc. in the course of construction of Airports, Metros, Bridges and Roads;
- (ii) With effect from 01.07.2012, Notification No.25/2012-ST dated 20.06.2012 granted exemption to Services by way of construction pertaining to airport, railways or metro under Serial No.14(a) and to Services provided by way of construction of road and bridge under Serial No.13(a) of the said Notification. Consequently, the service of fabrication/construction provided by the appellant to the contractors for construction of airport, metro, bridge and road was exempt from service tax. This contention is overlooked by the adjudicating authority.
- (iii) They were informed by the contractors that the work awarded to them was of fabrication/construction for airport, metro, bridge and road and the same was not liable to Service Tax. Since the above services provided by them being not liable to service tax, they have not paid the service tax and have not recovered the same from



the contractors. As a matter of fact, other sub-contractors of the said contractors have also not been paying service tax in respect of similar work awarded to them for air port, metro, bridge and road;

- (iv) The contention that the Contractors have not sub-contracted the Works Contract originally awarded to them and the service rendered by the appellant to the Contractors is only input service for the Contractor is entirely irrelevant to the question of their eligibility to the exemption under the Serial No.14(a) and 139a) of Notification No. 25/2012 dated 20.06.2012. Firstly, the services which are exempted under the said Serial Nos.14(a) and 13(a) need not be Works Contract Service. There is nothing in the said Serial Nos.14(a) and 13(a) which restricts the scope of the exemption to only Works Contract Service. So long as the service rendered by the appellant to the Contractor is one of either construction or erection or commissioning, etc. pertaining to an air port or metro or road or bridge, it is entitled to the exemption. Secondly, there is nothing in the said Serial Nos.14(a) and 13(a) to exclude their applicability when such service is provided by a sub-contractor. Nor is there anything in the said Serial No.14(a) or 13 (a) to suggest that the exemption will be available only to such person who does the entire work of construction of the road, etc. and not some part of such work such as for example constructing the railings on the road. As held by the Tribunal in Pioneer Fabricators Pvt. Ltd. Vs. CCE – 2016 (42) STR 563, even the work of supplying and fixing of Metal Crash Barriers would come under construction service and the same being in respect of roads is not liable to service tax;
- (v) The appellant have not paid service tax under the bona fide belief that the services provided by them being related to construction of roads, bridges, air port and metro were not liable to service tax. The fact that the work orders/letter of intent from the contractors indicated that service tax not payable since the service was for construction of roads, bridges, air port and metro reinforced the bona fide belief held by the appellant. Thus, the non-payment of service tax was on account of the said bona fide belief and not on account of any fraud, collusion or willful mis-statement or suppression of facts or contravention with an intent to evade tax. The appellant have maintained complete records in respect of the service rendered by them and it was apparent from the Work Orders and the Invoices that no service tax was being charged. There is no positive and deliberate act of concealment of facts nor any clandestine activity in the present case and therefore, larger period of limitation can not apply; and
- (vi) Since the demand for service tax is liable to fail both on merits and on limitation, the question of imposition of penalties does not arise.



The appellant further vide their letter dated 21.11.2019 made additional submissions wherein they had submitted copies of some Work Orders said to have involved in the issue under dispute.

4. Personal hearing in the matter was held on 13.11.2019 and on 19.03.2020. Shri N.K. Oza, Advocate appeared and reiterated the submissions of appeal memo for consideration.

5. I have carefully gone through the facts of the case, appeal memorandum, submissions made at the time of personal hearing, additional submissions made and evidences available on records. I find that the issue to be decided in the appeal on hand is as to whether under the facts and circumstance of the case, the service provided by the appellant is eligible for exemption from payment of service tax in terms of the Mega Exemption Notification No.25/2012-ST dated 20.06.2012 or not.

6. After going through the facts on records, I find that the SCN and the impugned Order denies the benefit of exemption under Notification No.25/2012-ST dated 20.06.2012 (in short '*the said Notification*') to the appellant on the ground that the appellant had provided the impugned services in the capacity of a sub-contractor to the main contractor and the nature of service provided by them to the main contractor was only labour services relating to Erection, Commissioning and Installation Services and the same does not come under the purview of a Work Contract and hence the exemption specified vide entry Sr.No.29(h) of the said Notification was not admissible to the appellant. The appellant, on the other hand, contends that the services provided by them to the main contractor being services of fabrication/construction related to construction of air port, metro, bridge and road, was exempted from service tax vide entry Sr.No.13(a) and 14(a) of the said Notification. It is their contention that there is nothing in the said Serial Nos.14(a) and 13(a) which restricts the scope of the exemption to only Works Contract Service and that so long as the service rendered by the appellant to the Contractor is one of either construction or erection or commissioning, etc. pertaining to an air port or metro or road or bridge, it is entitled to the exemption.

6.1 It is revealed from records like statement dated 26.02.2018 of Shri Mahendra Thummar, Authorised Representative, which is a relied upon document in the SCN, and the appellant's reply to the SCN, the appellant is raising the above contention right from beginning of the case. However, neither the SCN nor the impugned order seems to have examined or discussed the above contention of the appellant. The facts discussed in the SCN and the Order gives the impression that the exemption claimed by the appellant was that of Sr.No.29(h) of the said Notification which pertains to work contracts service provided by sub-contractors to main contractors. But, the fact was that the exemption claimed by the appellant was basically in terms of Sr.No.13(a) and (14(a) of the said Notification and not on Sr.No.29(h) as alleged in the SCN and confirmed in the Order. As can be seen, the admissibility of exemption claimed by the appellant in terms of Sr.No.13(a) and (14(a) of the



said Notification has been completely overlooked in the SCN and the Order. Evidently, the exemption denied to the appellant is not the one they basically claimed and to that extent it needs to be observed that the impugned Order did not decide the issue of the exemption claimed by the appellant and for that the same suffers from legal infirmity being against judicial principles. As a result, the impugned order is not sustainable before law and is deserved to be set aside.

7. I find that the adjudicating authority, while deciding the issue, has observed that the appellant had provided 'erection, commissioning and installation services' to M/s L&T Ltd. in the capacity of a sub-contractor but failed to discharge the service tax liability on the plea that service tax would be payable by the main contractor and that this contention of the appellant is not acceptable in view of CBEC Circular No.96/7/2007 dated 23.08.2007 wherein it was clarified that a sub-contractor is essentially a taxable service provider and the fact that services provided by sub-contractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor. The adjudicating authority has also observed that on the issue regarding payment of service tax by sub-contractors on services being provided to Works Contract Service Providers, the CBEC Circular No.138/07/2011-ST dated 06.05.2011 has clearly clarified that the services provided by the sub-contractors/consultants and other service providers are classifiable as per Section 65A of the Act under respective sub-clauses (105) of Section 65 of the Act and chargeable to service tax accordingly. On classification of the services provided, the adjudicating authority taking support from the decisions of Hon'ble Tribunal in the cases of SPL Developers (P) Ltd. [2015 (39) STR 455 (Tri.-Bang) and ABL Infrastructure Pvt. Ltd. [2015 (38) STR 1185 (Tri.-Mum) has observed that if a particular service has been rendered by the appellant pursuant to a works contract executed with the service recipient and if such service involved transfer of materials or property, then the same would be classified a 'works contract service' and similarly, even if rendition of a particular service was in pursuance of a works contract, if such service involved only labour charges or service portion, then the same would be classified as 'erection, commissioning or installation service' as the case may be and accordingly, the nature of service provided by the appellant in the case is only services of 'erection, commissioning or installation service' and since their work is only labour work involving no transfer of property of goods, it does not fall under the ambit of 'works contract service' as defined under the Act and hence has not entitled for the exemption claimed by them under the said Notification.

7.1 In this regard, it is observed that the adjudicating authority has decided the issue relying on clarifications issued for the period prior to negative list regime when the entire demand involved in the case pertains to period post negative list i.e. of after 01.07.2012. The case laws relied upon are also pertaining to the period prior to the negative list regime. It is a known fact that with the introduction of negative list, the taxability of a service is not based on classification of services as done earlier but is on the basis of services which are not



covered under the negative list as specified. The circulars relied upon in the SCN and by the adjudicating authority were those pertaining to clarifications issued for classification based taxability era. Things have undergone a sea change in the negative list regime and with the provisions of Section 65A of the Finance Act, 1994 ceasing to exist with effect from 01.07.2012, the said clarifications issued for previous tax regime, no more remains valid or relevant in the new tax regime.

8. Before going in to the merits of the contentions of the appellant, I would like to refer to the exemptions specified vide Sr.No.13(a), 14 (a) and 29(h) of the said Notification No.25/2012-ST dated 20.06.2012 which are as under:

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

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

14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

(a) an airport, port or railways, including monorail or metro;

29. Services by the following persons in respective capacities -

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;”

After going through the above entries, it can be seen that the exemption provided vide Sr.No.13(a) and 14(a) of the said Notification are for services by way of construction, erection, commissioning, installation, etc. for works pertaining to infrastructure projects specified therein. It is not necessary that such services to be provided under a works contract only. The services mentioned in the said entries even by their individual nature also would get covered under the purview of exemption granted therein. This has been clearly clarified by the Board in the answer to the Question given under Section 7.11.11 of the Education Guide issued by TRU in June, 2012 in the context of ‘Negative List Regime’ being introduced with effect from 01.07.2012, which is as under:

“7.11.11 Whether the exemption provided in the mega-exemption to services by way of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., is also available to the sub-contractors who provide input service to these main contractors in relation to such construction?”

As per clause (1) of section 66 Preference to a service by nature or description in the Act will not include reference to a service used for providing such service. Therefore, if any person is providing services, in respect of projects involving construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., such as architect service, consulting engineer service., which are used by the contractor in relation to such construction, the benefit of the specified entries in the mega-exemption would not be available to such persons unless the activities carried out by the sub-contractor independently and by itself falls in the ambit of the exemption.



It has to be appreciated that the wordings used in the exemption are 'services by way of construction of roads etc' and not 'services in relation to construction of roads etc'. It is thus apparent that just because the main contractor is providing the service by way of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams etc., it would not automatically lead to the classification of services being provided by the sub-contractor to the contractor as an exempt service.

However, a sub-contractor providing services by way of works contract to the main contractor, providing exempt works contract services, has been exempted from service tax under the mega exemption if the main contractor is engaged in providing exempt services of works contracts. It may be noted that the exemption is available to sub-contractors engaged in works contracts and not to other outsourced services such as architect or consultants."

The portion underlined above unambiguously makes it clear that if the activities carried out by the sub contractor independently and by itself falls in the ambit of exemption, such exemption would be admissible to the sub-contractors also. Therefore, I find force in the argument of the appellant that the exemption granted vide entry Serial Nos.14(a) and 13(a) of the said Notification does not restrict the scope of the exemption to only Works Contract Service. What is exempted vide above referred entries of the said Notification are services of the nature specified therein when provided to infrastructure works/projects specified therein, irrespective of the class/category of service provider who provides the said specified service viz. main contractor or subcontractor. Further, it is pertinent to observe that the department themselves has contended and classified the nature of service provided by the appellant in the present case as that of "Erection, Commissioning or Installation Service" and the said service is clearly covered in the category of services mentioned in Sr.No.13(a) and 14(a) of the said Notification.

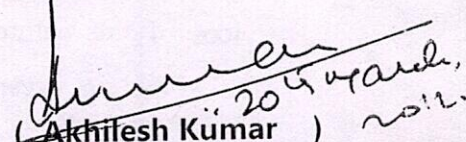
9. The appellant vide their additional submissions dated 21.11.2019 has submitted copies of some Work Orders said to have involved in the issue under dispute. It is stated by them that those documents were submitted to the lower authority but the said authority has not considered the same while deciding the case. After perusing the said Work Orders produced, I find that the nature of work specified in some of the work Orders clearly indicates the works awarded therein as pertaining to Road projects and Air port. That being so, the appellant's claim on exemption in terms of Sr.No.13(a) and 14(a) of the said Notification can not be overlooked and it requires consideration in the interest of principles of justice. I find that the impugned Order in the present case was passed on 16.05.2019 and issued on 22.05.2019 and the appellant had submitted the copies of work orders mentioned above to the adjudicating authority by e-mail on 24.05.2019, after the issuance of the impugned Order. Thus, it is clear that the adjudicating authority did not have the opportunity to go through the said documents before deciding the case. I find that the nature of service provided as revealed from the above referred work orders is a crucial factor in deciding the admissibility of the exemption claimed by the appellant. Therefore, the entire work orders related to the debit notes, relied upon for the demand in the case, need to be examined thoroughly for deciding judiciously the exemption under claim in the present case.



This exercise requires cross verification of work orders with the Debit Notes involved and ascertaining the actual nature of service provided from the work orders received by the appellants and by the main contractors. For that reason, the case is required to be remanded back to the original adjudicating authority for deciding the case afresh on the basis of facts and evidences discussed above. The adjudicating authority has to consider the appellant's claim on exemption based on Sr.No.13(a) and 14(a) of the said Notification and decide the admissibility of the said exemption on the basis of nature of services as revealed from the Work Orders/documents of similar nature which will be produced by the appellant in support of their contention. The appellant has to produce the copy of all work orders/documents related to the debit notes involved in the demand and other evidences in support of their contention to the adjudicating authority for deciding the case afresh. They may further take note of the fact that as the matter under dispute is of exemption, the onus of proving the admissibility of the exemption claimed by the appellant basically rest with them.

10. In view of the above discussions, the impugned order is set aside and the appeal is allowed by way of remand to the original authority for deciding the case afresh.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeals filed by the appellant stand disposed off in above terms.


(Akhilesh Kumar)
Commissioner (Appeals)

Date: 20.03.2020.

Attested:



(Anilkumar P.)
Superintendent(Appeals),
CGST, Ahmedabad.



BY SPEED POST TO:

M/s Karnavati Engineers,
Plot No.8,
Road No.1, Kathwada GIDC,
Kathwada,
Ahmedabad

Copy to:-

1. The Chief Commissioner, Central Tax , Ahmedabad Zone..
2. The Commissioner, CGST, Ahmedabad South.
3. The Deputy Commissioner, CGST Division-V, Ahmedabad South.
4. The Asstt. Commissioner, CGST (System), HQ, Ahmedabad South.
(for uploading the OIA on website)

~~5.~~ Guard file.

6. P.A. File