



सत्यमेव जयते

आयुक्त(अपील)का कार्यालय,
Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाडी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलिफैक्स 07926305136



DIN : 20221164SW0000888B86

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/174/2022 / 1588-92
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-068/2022-23
दिनांक Date : 28-10-2022 जारी करने की तारीख Date of Issue 10.11.2022
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. 17/CGST/Ahmd-South/ADC/MA/2021 दिनांक: 16.03.2021 passed by
Additional Commissioner, CGST, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

- M/s Samvit Build Care Pvt Ltd
11, Alkapuri Society,
Gulbai Tekra,
Ahmedabad - 380009

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

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

भारत सरकार का पुनरीक्षण आवेदन :

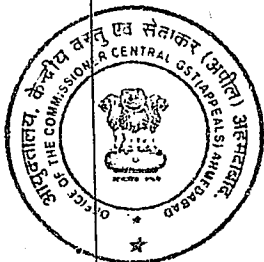
Revision application to Government of India:

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

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

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

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



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के 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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ.का मुख्य शीर्ष 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 हों 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 सेवा कर 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 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.6.50 पैसे कान्यायालय 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.

- (44) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(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 सेवाकर 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.

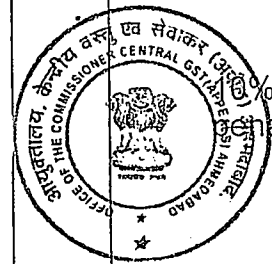
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (cxv) amount determined under Section 11 D;
- (cxvi) amount of erroneous Cenvat Credit taken;
- (cxvii) amount payable under Rule 6 of the Cenvat Credit Rules.

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

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



ORDER-IN-APPEAL

The present appeal has been filed by M/s. Samvit Build Care Pvt. Ltd., 11, Alkapuri Society, Gulbai Tekra, Ahmedabad-380 009 [previously at 402, Kirtiman Complex, Opposite Kadwa Patidar Hostel, Gulbai Tekra, Ahmedabad] (hereinafter referred to as the appellant) against Order in Original No. 17/CGST/Ahmd-South/ADC/MA/2021 dated 16.03.2021 [hereinafter referred to as "*impugned order*"] passed by the Additional Commissioner, CGST, Commissionerate : Ahmedabad South [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case is that the appellant were holding Service Tax Registration No. AACCS1065JST001 and engaged in providing various taxable services. During the course of an enquiry initiated against various services providers regarding details of work executed for M/s. Gujarat State Police Housing Corporation Ltd. (GSPHCL), the appellant was called upon vide letter dated 31.10.2011 to submit their financial documents relating to payment of service tax. As the appellant failed to submit the documents, despite reminders, the premises of the appellant was visited on 26.02.2014 and the documents were submitted by the appellant vide their letter dated 26.02.2014. The appellant also submitted the details of the service tax amounting to Rs.68,00,669/-, for the period from 01.04.2009 to 31.01.2014, short paid by them, in respect of Works Contract service, Housekeeping and Maintenance and Repair service. Statements of the Managing Director of the appellant was also recorded on different dates as well as further documents were obtained from the appellant. From the statements of the Managing Director as well as the documents submitted by the appellant, it appeared that they had not discharged service tax on the income received by them for Works Contract services provided to GSPHCL. It also appeared that the appellant were providing Cleaning Services to State Government, PSUs etc. but had not paid service tax on the income received by them for providing Cleaning service. It appeared that Cleaning Services provided to Government and non-commercial buildings were not chargeable to service tax till 30.06.2012 in terms of relevant Section 65 (105) (zzzd) of the Finance Act, 1994 and CBIC Circular No. B1/6/2005-TRU dated 27.07.2005.



However, from 01.07.2012, no exemption has been provided under Notification No.25/2012-ST dated 20.06.2012 in respect of Cleaning Services provided to Government and non-commercial buildings. Therefore, the appellant appeared to be liable to pay service tax in respect of the Cleaning Services provided by them.

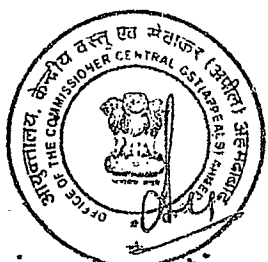
3. On conclusion of investigation, the appellant was issued a Show Cause Notice bearing No. STC/4-85/O&A/2015-16 dated 22.03.2016 wherein it was proposed to :

- a) Treat the income of Rs.8,26,23,996/- under Housekeeping service and Rs.13,52,02,060/- under Works Contract service during F.Y.2009-10 to F.Y.2013-14 as taxable income under Cleaning Service (Housekeeping service) and Works Contract service upto 30.06.2012 and as 'Service' in terms of Section 65B(44) read with Section 66D of the Finance Act, 1994 with effect from 01.07.2012.
- b) Demand and recover service tax amounting to Rs.1,00,67,292/- in respect of Housekeeping service and Rs.61,68,085/- in respect of Works Contract Service under the proviso to Section 73 (1) of the Finance Act, 1994.
- c) Adjust the service tax amounting to Rs.13,45,524/- paid by them (for VCES) against their service tax liability.
- d) Recover Interest under Section 75 of the Finance Act, 1994.
- e) Impose penalty under Sections 77 (2) and 78 of the Finance Act, 1994.

3.1 The Managing Director of the appellant, Shri Umesh Mohanlal Gor was also called upon to show cause as to why penalty should not be imposed upon him under Section 78A of the Finance Act.

4. The SCN was adjudicated vide the impugned order wherein :

- A) The consideration amounting to Rs.8,26,23,996/- received by the appellant towards Housekeeping service was ordered to be treated as taxable value.
- B) The consideration amounting to Rs.13,52,02,060/- received by the appellant towards Works Contract service was ordered to be treated as taxable value.



- C) The demand of service tax amounting to Rs.1,00,67,292/- in respect of Housekeeping service was confirmed under the proviso to Section 73 (1) of the Finance Act, 1994.
- D) The demand of service tax amounting to Rs.61,68,085/-- in respect of Works Contract service was confirmed under the proviso to Section 73 (1) of the Finance Act, 1994.
- E) The service tax amounting to Rs.13,45,524/- paid by the appellant was appropriated.
- F) Interest was charged and ordered to be recovered under Section 75 of the Finance Act, 1994.
- G) Penalty amounting to Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994.
- H) Penalty equivalent to the service tax amount confirmed was imposed under Section 78 (1) of the Finance Act, 1994.
- I) Penalty of Rs.1,00,000/- was imposed on Shri Umesh Mohanlal Gor, Managing Director of the appellant, under Section 78A of the Finance Act, 1994.

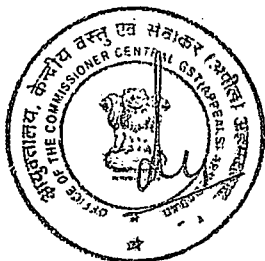
5. Being aggrieved with the impugned order, the appellant have filed the present appeal on the following grounds :

- i. The impugned order is passed without considering the submissions made by them.
- ii. There has been a gross error in calculation as shown in Annexure B to the SCN. The calculation is done on the basis of total income as per ledgers, however, income as per audited Balance Sheet is not taken into consideration.
- iii. For the period prior to 2011 (prior to Point of Taxation Rules, 2011), the service tax was required to be paid only when payment was received against provision of service. No such adjustment of opening or closing debtors is taken in to account in raising demand for F.Y. 2009-10 and F.Y. 2010-11.
- iv. They are engaged in providing taxable as well as exempted services. The department has not taken into consideration the exempted services provided, especially, Maintenance/Housekeeping services provided to

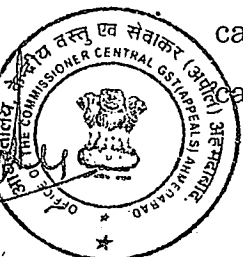


Sachivalay, Gujarat Vidhansabha, residences of various MLAs and MPs.

- v. Prior to 01.04.2011, the person liable to pay service tax was required to pay the service tax in the month following the month in which payments are received. Hence, service tax was required to be paid irrespective of the amounts receivable as per invoice issued. Consequently, remittance of a part of service tax got deferred sometimes indefinitely in case payment was not received.
- vi. As per the reconciliation statement submitted along with their reply to SCN, the service tax amounting to Rs.62,74,697/- was payable by them for F.Y. 2009-10 to F.Y. 2013-14.
- vii. They had not filed returns for F.Y. 2012-13 and F.Y. 2013-14, hence, the entire amount (excluding exempted service) is considered in the reconciliation. They had filed returns for F.Y. 2009-10 to F.Y. 2011-12 and the taxable amount shown in the returns is adjusted in the reconciliation statement. As per the returns, the total liability of service tax shown is Rs.30,45,982/-.
- viii. They had constructed residential quarters for GSPHCL during 2013-14 for which demand has been raised under Works Contract service.
- ix. For the period prior to 30.06.2012, Works Contract service was defined under Section 65(105) (zzzza) of the Finance Act, 1994. As per clause (c) of the said definition, service tax is applicable on works contract service provided for construction of residential complex, for which the definition of residential complex must be considered. However, the adjudicating authority has failed to do so.
- x. Residential Complex is defined in Section 65 (105) (91a) of the Finance Act, 1994. As per the third clause, a residential unit intended for personal use is excluded from service tax. Personal use is defined in the explanation as permitting the complex for use as residence by another person on rent or without consideration.
- xi. In the present case, the land is provided by the Police department and the residential quarters are used for residential use by officers of the Police department. Hence, construction of residential quarters for GSPHCL is covered by the exclusion clause and service tax is not applicable.

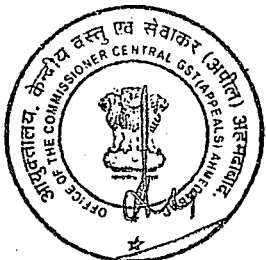


- xii. The CBIC had vide Circular No.80/10/2004-ST dated 17.09.2004 clarified that any construction of government building used for residential purposes or government office purposes or for providing civic amenities and non-commercial in nature would not be levied to service tax.
- xiii. The adjudicating authority has at Para 38.6 of the impugned order relied upon Circular No.332/16/2010-TRU dated 24.05.2010 and held that non-taxability of a service cannot be extended to sub-contractors. As per clause (b) to Explanation to Section 65(105)(zzzza), service tax would be chargeable only if the building or civil structure is used primarily for commerce or industry. Non-taxability specified in the Act cannot be overlooked by relying upon a Circular to prove taxability.
- xiv. From the definition of Works Contract, it is clear that service tax cannot be levied on non-commercial buildings and residential buildings used for personal use. Residential quarters for officers of Police cannot be termed as commercial buildings and, hence, service tax cannot be demanded.
- xv. They rely upon OIA No.03/2013(Ahd-III)/SKS/Commr(A)/Ahd dated 08.01.2013 passed by the Commissioner(Appeal-III), Ahmedabad. Reliance is also placed upon the decision in the case of Sima Engg. Constructions Vs. CCE, Trichy - 2010-TIOL-1734-CESTAT-MAD; Khurana Engineering Ltd. Vs. Commissioner of C.Ex., Ahmedabad - 2011 (21) STR 115 (Tri.-Ahmd); S. Kadrivel Vs. Commissioner of C.Ex. & S.T, Tiruchirapalli - 2013 (30) STR 414 (Tri.-Chennai); R.N. Dobariya Vs. CCE & ST in Appeal No.ST/11548 and 11571/13-DB.
- xvi. For the period from 01.07.2012, it is submitted that the services provided to the Governmental Authority for civil structure is exempt vide Serial No.12(a) of Notification No.25/2012-ST dated 20.06.2012.
- xvii. GSPHCL was formed by the government of Gujarat with 100% share holding, under the Companies Act, 1956 is termed as government authority as it is established by the government with 100% holding. It also satisfies the condition of carrying out function entrusted as per Twelfth Schedule of Article 243W of the Constitution.
- xviii. It has been held at Para 38.4 of the impugned order that GSPHCL cannot be termed as a governmental authority by relying upon some case law. But in all such case laws, the assessee were profit making



entities. In the instant case, GSPHCL is not a profit making entity and is working only as a executing agency under the direction of the State Home department.

- xix. It has been held in the impugned order that GSPHCL have sub-contracted the contract for construction services to the appellant and that they have provided services to GSPHCL and to the government directly. It is submitted that GSPHCL acted as a bridge between the Home department and them. Therefore, just because the service has been provided by them to GSPHCL, the department cannot declare that GSPHCL and the Home Department are separate entities.
- xx. In the impugned order, exemption has been granted for cleaning contract entered into by them with the government departments upto 30.06.2012 under Section 65 (105) (zzzd) read with sub-section 24(b) of the Finance Act, 1994. Even after 01.07.2012, service tax shall not be levied on cleaning services to government as per Entry No. 12 (a) of Notification No.25/2012-ST dated 20.06.2012. The maintenance services provided to government for civil structure is exempt under the said Notification.
- xxi. Maintenance or Housekeeping is not defined under the Act and, hence, they refer to the definition given in www.freedictionary.com. Housekeeping basically means maintenance or up keeping of the existing property.
- xxii. As per the summary of the challan submitted, they have paid interest amounting to Rs.2,16,853/- and they assure that the interest pertaining to the remaining liability will be discharged along with the service tax amounting to Rs.18,66,424/-.
- xxiii. There was no mala fide intention or suppression of facts on their part. Since the extended period is not available to the department, the demand must fail. There is no finding in the impugned order as regards mala fide intention or suppression of facts on their part. So long as their belief is bona fide and genuine, allegation of intention to evade cannot be sustained.
- xxiv. Penalty under Section 78 can be levied only if there is a fraud, collusion, wilful mis-statement, suppression of facts or contravention of any provision with intent to evade payment of service tax and it can be imposed only by invoking extended period.

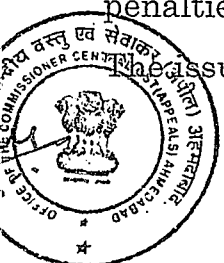


- xxv. There is no finding in the SCN which can allege that they intent to evade payment of tax.
- xxvi. When no tax is payable, the question of penalty does not arise. Further, as per Section 80, no penalty can be imposed if it is proved that there was a reasonable belief for default or failure.
- xxvii. They rely upon the decision in the case of CCE, Meerut-II Vs. On Dot Couriers & Cargo Ltd. – (2006) 6 STJ 337 (CESTAT, New Delhi); Daurala Organics Vs. Commissioner of Central Excise – 2014 (4) TMI 843- Allahabad High Court.
- xxviii. Though reasonable cause has not been defined, it has been interpreted in various cases. Reliance is placed upon – Gujarat Water Supply & Sewerage Board Vs. Uniqui Erectors (Gujarat) Pvt. Ltd. – (1989) AIR 973 (Supreme Court); Ram Krishna Travels Pvt. Ltd. Vs. CCE, Vadodara – 2007-TMI-977-CESTAT –Mumbai; Commissioner of Wealth Tax Vs. Jagdish Prasad Choudhary – (1996) AIR 58 (Patna).
- xxix. Regarding penalty under Section 78A, it is submitted that they have not evaded any service tax and neither have they collected and retained any service tax for more than six months. They have provided services to government who have not paid service tax and they have been depositing service tax from their pockets. Hence, there is no reason with the department to impose penalty under Section 78A.

6. Personal Hearing in the case was held on 07.10.2022. Shri Rashmin Vaja, Ms. Bhagyashree Dave, and Ms. Prachi Desai, Chartered Accountants, appeared on behalf of appellant for the hearing. They reiterated the submissions made in appeal memorandum.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum and the material available on records. It is seen that though the appellant have, in their appeal memorandum, contested the penalty imposed on their Managing Director under Section 78A of the Finance Act, 1994, no appeal has been filed by the Managing Director. The present appeal has been filed only by the appellant with regard to the confirmation of demand of service tax along with interest and imposition of penalties. The demand pertains to the period F.Y. 2009-10 to F.Y. 2013-14.

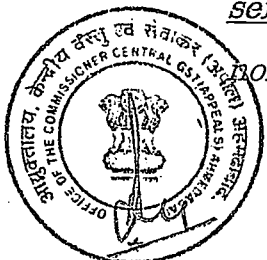
Issues before me for decision are :



- A) Whether the Cleaning services (Housekeeping services) provided by the appellant are chargeable to service tax, as contended by the department, or whether the same is exempted in terms of Serial No. 12(a) of Notification No.25/2012-ST dated 20.06.2012?
- B) Whether the Works Contract services provided by the appellant to GSPHCL are chargeable to service tax, as contended by the department, or whether the same is exempted in terms the exclusion contained in Section 65 (105) (91a) of the Finance Act, 1994 for the period prior to 01.07.2012 and under Serial No. 12(a) of Notification No.25/2012-ST dated 20.06.2012?

8. Before delving in to the merits of the above issues, I find that the appellant have contended in their appeal memorandum that they are providing taxable as well as exempted services. However, while calculating the demand, the department has considered even the exempted services provided by them. I have perused Annexure 'B' to the impugned SCN in which the financial year wise service tax payable by the appellant, in respect of Cleaning Services and Works Contract Services, is calculated. I find that in the said Annexure 'B', the total income, the exempted income and the non-exempted income is mentioned and the service tax payable by the appellant has been calculated on the non-exempted income. Therefore, the contention of the appellant in this regard is bereft of any merit.

8.1 I find that it is mentioned at Para 8(v) of the impugned order that "*However, on going through the legal provisions, it transpires that there were no such exemption available. Therefore, the Service Provided to the M/s. GSPHCL for the F.Y. 2013-14, are taxable*". Further, at Para 8 (vi) of the impugned order, it is mentioned that "*Until 30.06.2012 the Cleaning Services were exempted vide CBEC circular No. B1/6/2005-TRU dated 27-05-2005 (Annex 29-1) as provided in Para 9.2 and 9.3 in respect of non-commercial buildings and premises thereof. Thereafter, in the Mega Exemption Notification No.25/2012-ST dated 20.06.2012, nowhere any exemption has been given to cleaning services. Therefore, since 01.07.2012 the cleaning services are taxable even in case of services provided to the government and non-commercial buildings*" [emphasis supplied].



8.2 From the above, it is seen that the Works Contract services provided by the appellant to GSPHCL during F.Y. 2013-14 has been held to be taxable. Similarly, in the case of Cleaning Services, it has been held that the same is taxable from 01.07.2012 even if provided to government and non-commercial buildings. However, from the Table given in Para 9 of the impugned order as well as from Annexure 'B' to the impugned SCN, it is seen that service tax has been demanded in respect of Works Contract Services and Cleaning Services for the period from F.Y. 2009-10 to F.Y. 2013-14. The details contained in the said Table given in Para 9 of the impugned order are reproduced below :

(Amount in Rs)

Year	Total Gross Revenue	Housekeeping (Cleaning)			
		Gross Revenue	Exempt	Taxable	Tax Payable
2009-10	53915033	17314031	15746533	1567498	161452
2010-11	58644369	25789911	22072440	3717471	382899
2011-12	64134886	25474535	23719044	1755491	180816
2012-13	90623554	34476330	7596326	26880004	3322368
2013-14	93913676	48703533	0	48703533	6019757
	361231518	151758340	69134343	82623997	10067292

(Amount in Rs)

Year	Works Contract			
	Gross Revenue	Exempt	Taxable	Tax Payable
2009-10	36601002	4279582	32321420	1331643
2010-11	32854458	18533277	14321181	590033
2011-12	38660351	22644537	16015814	659852
2012-13	56147225	11007413	45139812	2231712
2013-14	45210143	17806311	27403832	1354845
	209473179	74271120	135202059	6168085

8.3 From the details contained in the Table above, it is seen that the demand of service tax has been raised only in respect of the taxable income of the appellant during the relevant period and the income received for providing exempted services have been excluded from the computation of the demand of service tax. However, it is not forthcoming as to which part of Cleaning Service and Works Contract Service, provided by the appellant, has been considered among the category of exempted service. This assumes significance in light of the fact that the impugned SCN and the impugned



order acknowledge the fact that the Cleaning Services provided by the appellant to Government and non-commercial buildings were exempted upto 30.06.2012.

8.4 The appellant have, in respect of the Cleaning Services provided by them, admitted to service tax liability amounting to Rs. 34,35,385/- for the period from F.Y. 2009-10 to F.Y.2013-14. However, the appellant have till date not paid the amount of service tax admitted by them as being payable.

8.5 The appellant have also contended that the Cleaning Services were provided by them to various Government Departments which were not chargeable to service tax. However, from the impugned SCN and the impugned order, it is not clearly forthcoming whether the said services provided by the appellant to the government departments, governmental authorities etc. were considered as exempted or otherwise. This is a very crucial aspect inasmuch as the main thrust of the appellant's contention in the present appeal is that the said services provided by them to government or governmental authorities were exempted from payment of service tax. Hence, it is very essential to first determine and specify whether the service tax which was demanded and confirmed against the appellant vide the impugned order is in respect of the services provided by them to private entities or to government/governmental authorities.

8.6 In respect of Works Contract service provided by the appellant to GSPHCL, I find that the appellant have admitted to service tax liability amounting to Rs. 27,95,449/-. However, it is not clear whether the admitted liability is in respect of the Works Contract service provided by them to GSPHCL or to other entities. Further, the appellant have despite admitting their liability to pay service tax to the above extent, till date not paid the said amount of service tax.

8.7 I find that the adjudicating authority has given his finding on the contention of the appellant regarding the Works Contract service provided by them to GSPHCL at Para 38.2 of the impugned order, which is reproduced below :



“The assessee has submitted that exempted services provided by the assessee to M/s Gujarat State Police Housing Corporation have been considered as taxable by department. However, contrary to the contention of the assessee, I find that consideration received by the assessee against exempted services has been deducted from the gross receipts of the assessee from works contract services, as can be seen from the calculation sheet annexed to the SCN.”

8.8 From the above finding it appears that the adjudicating authority has considered the Works Contract Service provided by the appellant to GSPHCL as exempted. However, the findings in the subsequent paragraphs of the impugned order are contrary to his findings in the above mentioned Para 38.2 of the impugned order.

8.9 The appellant have in support of their claim for exemption in respect of the Works Contract services provided to GSPHCL relied upon a few decisions of the Hon'ble Tribunal as well as OIA No. 3/2013(Ahd-III)SKS/Commr.(A)/Ahd dated 08.01.2013 passed by the Commissioner (Appeals-III), Ahmedabad in the case of M/s.Bahusmarna Construction Co. The said OIA was passed on an issue involving an identical issue for the period prior to 01.07.2012. While the decisions of the Hon'ble Tribunal were part of the submissions made by the appellant before the adjudicating authority, apparently the decision in the OIA supra, was not brought to the notice of the adjudicating authority by the appellant.

8.10 It is also observed that the adjudicating authority has proceeded to decide the issue of taxability of the Works Contract service provided by the appellant to GSPHCL, for the period from 2009-10 to 2013-14, based on provisions of law prevailing prior to 01.07.2012. The adjudicating authority has also not considered or examined the issue in light of the definition of 'governmental authority' as per clause 2(s) of Notification No.25/2012-ST dated 20.06.2012.

9. There has been substantial changes in the provisions of the Finance Act, 1994 with effect from 01.07.2012, which has affected the taxability of services. Further, much of the erstwhile exemptions were substituted vide the exemptions granted under Notification No.25/2012-ST dated 20.06.2012. So as to be able to determine the taxability of the said services before and after 01.07.2012 as well as determine whether the said services were



exempted or otherwise, it is necessary to have a clear understanding of the nature of entities i.e. private or Government, to whom the said services were provided by the appellant. However, I find that the impugned order is cryptic in this regard and these aspects are not clearly forthcoming. The appellant have also not submitted any material in this regard in their appeal memorandum. Consequently, in the absence of these details, it is not possible for this authority to determine the taxability of the said services as well as the eligibility to exemption claimed by the appellant.

9.1 . Accordingly, I am left with no other option but to remand the matter back to the adjudicating authority to pass an order afresh clearly specifying whether the services in respect of which service tax is being demanded are those which were provided to private entities or whether the same were provided to government/governmental authorities. The adjudicating authority is also directed to examine the issue of Works Contract service provided by the appellant to GSPHCL in light of the observations in Para 8.9 and 8.10 above. The appellant are directed to submit, within 15 days of the receipt of this order, clear and specific details and relevant documents to the adjudicating authority in respect of the services provided by them to private entities and/or to the government/governmental authorities. Accordingly, the impugned order is set aside and remanded back to the adjudicating authority. The appeal filed by the appellant is allowed by way of remand. .

9. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in above terms.

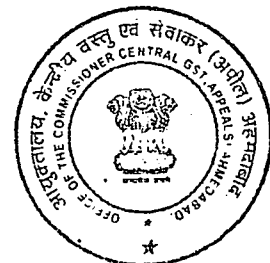
Attested:

(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

BY RPAD / SPEED POST

To

Akhilesh Kumar
(Akhilesh Kumar)
Commissioner (Appeals)
Date: 28.10.2022.



M/s. Samvit Build Care Pvt. Ltd.,
11, Alkapuri Society,
Gulbai Tekra,
Ahmedabad-380 009

Appellant

The Additional Commissioner,
CGST,
Commissionerate : Ahmedabad South.

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South.
(for uploading the OIA)
4. Guard File.
- ✓ 5. P.A. File.

