



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

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



DIN: 20231164SW0000777A2A

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/3999/2023 / 6086 - 90
- ख अपील आदेश संख्या Order-In-Appeal No. **AHM-EXCUS-001-APP-163/2023-24**
दिनांक Date : 31-10-2023 जारी करने की तारीख Date of Issue 07.11.2023
आयुक्त (अपील) द्वारा पारित
Passed by **Shri Gyan Chand Jain**, Commissioner (Appeals)
- ग Arising out of OIO No. 524/AC/Div-I/HKB/2022-23 दिनांक: 24.03.2023 passed by The Assistant Commissioner, CGST, Division I, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant
M/s. Munish Motilal Rajput,
B-60, Vinayaka Park Society,
Nani Canal Road, Vastral,
Ahmedabad-382418.

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 :

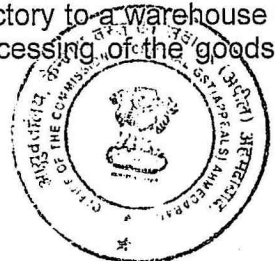
Revision application to Government of India:

(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 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 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 होतो 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 शुल्कअधिनियम 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.

1^प 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)-

- a. (Section) खंड 11D के तहत निर्धारित राशि;
इण लिया गलत सेनवैट क्रेडिट की राशि;
बण सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

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

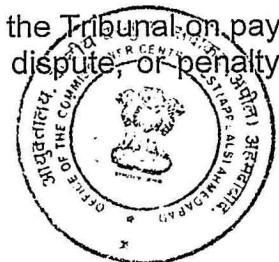
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

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

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

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

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



ORDER IN APPEAL

The present appeal has been filed by M/s Munesh Motilal Rajput, B-60, Vinayak Park Society, Nani Canal Road, Vastral, Ahmedabad-382 418 (hereinafter referred to as the "Appellant") against Order in Original No. 524/AC/Div-I/HKB/2022-23 dated 24.03.2023 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner, Division-I, CGST, Ahmedabad South (hereinafter referred to as "adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant were not found to be registered with Service Tax department. They are holding PAN No. AOQPR1163R. As per the information received from the Income Tax Department, the appellant had earned substantial service income amounting to Rs. 37,79,568/- during 2015-16 & 2016-17, however did not obtain service tax registration and did not discharge service tax. The appellant were sought to provide documentary evidence in respect to the above mentioned income, which they failed to produce. Therefore, the appellant were issued Show Cause Notice, wherein it was proposed to:

- a) Demand and recover an amount of Rs. 5,57,893/- for the F.Y. 2015-16 & 2016-17 under proviso to Sub Section (1) of Section 73 of the Finance Act, 1994 along with interest under section 75 of the Finance Act 1994.
- b) Impose penalty under the provisions of Section 77 (1) and 78 of the Finance Act, 1994.

3. The SCN was adjudicated ex-parte vide the impugned order wherein:

- a) The demand of service tax amounting to Rs. 5,57,893/- was confirmed along with interest.



- b) Penalty amounting to Rs. 5,57,893/- was imposed under 78(l) of the Finance Act, 1994.
- c) Penalty amounting to Rs. 10,000/- was imposed under 77(1) of the Finance Act, 1994.

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

- The appellant have submitted bifurcation of income for F.Y. 2015-16 and F.Y. 2016-17 as follows:

Year	Sale of service	Sale of Goods	Commission received	Total
2015-16	17,90,318	-	18,000	18,08,318
2016-17	7,53,280	11,89,690	28,280	19,71,250

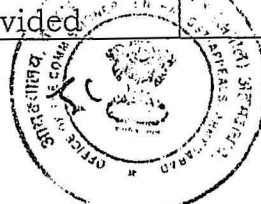
- The appellant is providing repairing and maintenance services to the builders. Therefore the same would fall under the definition of works contract service. Clause (h) of Section 66E of the Act stipulate that service portion in the execution of work contract is a service, hence on this part service tax is to be levied accordingly.
- The Appellant is following the valuation as per Rule 2A(ii) of service tax (Determination of valuation) Rule, 2006.
- The Appellant has submitted the calculation of taxable value with the service tax liability to be paid on the same as follows for F.Y. 2015-16 and F.Y. 2016-17.

For F.Y. 2015-16

Particulars	Value
Value of the income received from the works contract services provided	17,90,318
Less: Abatement @ 30 %	5,37,095
Net Taxable Value	12,53,223
Service tax to be paid	1,81,917

For F.Y. 2016-17

Particulars	Value
Value of the income received from the works contract services provided	7,53,280



Less: Abatement @ 30 %	2,25,984
Net Taxable Value	5,27,296
Service tax to be paid	79,095

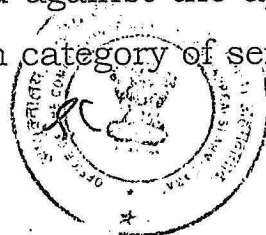
- The Appellant submitted that income of Rs. 11,89,690/- out of total value Rs. 37,79,568/- in F.Y. 2015-16 and 2016-17 pertain to sale of goods in the books of Account, which is exempted as per section 66D(e) as trading of goods. Hence the demand raised on the income amounting to Rs. 11,89,690 is null and void for F.Y. 2016-17.
 - The Appellant is agreeing with the penalty imposed under section 77(1) of the Act for not taking service tax registration by the adjudicating authority.
 - The Appellant submitted that extended period cannot be invoked in the instant case. The Appellant were regularly filling ITR, TDS was also deducted on the income therefore it cannot be said the the appellant had not declared his income to the government authorites. Since no objection was raised by the Service tax department in relation to the period for which SCN was issued till 2020-21. Therefore it cannot be said the appellant had suppressed material facts or information. In its support they rely on the judgment of Hon'ble CESTAT Mumbai in the case of Sunil Forging & Steel Ind. V. CCE Belapur [2016 (332) E.L.T. 341 (Tri.-Mumbai)]. They also rely on the judgment of the Hon'ble Supreme Court in the case of (1) Pahwa Chemical Pvt. Ltd. v. CCE , Delhi [2005(189)E.L.T. 257 (S.C.)], (2) Anand Nishikawa Co. Ltd. v. CCE, Meerut [2005(188)E.L.T. 149 (SC) (3) 2018 (2) TMI 23 -Delhi High Court in the case of Bharat Hotels Limited v. CCE (Adj.)
 - The Appellant submitted that the penalty ought not be imposable if there would be no intention to evade payment of service tax on the part of appellant.
5. Personal Hearing in the case was held on 11.09.2023. Sh. Arjun Akruwala, CA, appeared on behalf of Appellant for the



hearing and handed over additional written submissions with supporting documents. He reiterated the contents thereof and this submission in the appeal. He submitted that the appellant provided work contract service during the year 2015-16 on which they are willing to pay applicable service tax after allowing eligible abatement of 70%. During the year 2016-17 the Appellant rendered sale of goods and also provided, works Contract service as mentioned in the Profit and Loss Account. They are willing to discharge tax liability on the service rendered after allowing abatement of 70 %. Therefore he requested to modify the impugned order.

6. I have gone through the facts of the case, submission made in the Appeal Memorandum, oral submissions made at the time of personal hearing and the material available on record. The issue before me for decision is whether the impugned order passed by the adjudicating authority confirming demand of service tax amount of Rs. 5,57,893/- along with interest and penalties, considering the facts and circumstances of the case, is legal and proper or otherwise. The dispute pertains to the period F.Y. 2015-16 & F.Y. 2016-17.

7. It is observed that the demand of service tax was raised against the Appellant on the basis of the data received from Income Tax department. It is stated in the SCN that the nature of the activities carried out by the Appellant as a service provider appears to be covered under the definition of service; appears to be not covered under the Negative List of services as per Section 66D of the Act and also declared services given in 66E of the Act, as amended; appears to be not exempted under mega exemption Notification No. 25/2012-ST dated 20.06.2012 as amended. However, nowhere in the SCN it is specified as to what service is provided by the appellant, which is liable to service tax under the Act. No cogent reason or justification is forthcoming for raising the demand against the appellant. It is also not specified as to under which category of service, the non



payment of service tax is alleged against the appellant. The demand of service tax has been raised merely on the basis of the data received from the Income Tax. However, the data received from the Income Tax department cannot form the sole ground for raising of demand of service tax.

7.1 I find it pertinent to refer to Instruction dated 26.10.2021 issued by the CBIC, wherein it was directed that:

"It was further reiterated that demand notices may not be issued indiscriminately based on the difference between the ITR-TDS taxable value and the taxable value in Service Tax Returns.

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

7.2 However, in the instant case, I find that no such exercise, as instructed by the Board has been undertaken, and the SCN has been issued only on the basis of the data received from the Income Tax department. Therefore, on this very ground the demand raised vide the impugned SCN is liable to be dropped.

8. I have carefully gone through the submission of the appellant and I observed that they are providing work contract service and agreeing to pay the liability of service tax on the value of service rendered by the appellant. I discuss the matter financial year wise and therefore I firstly take up the issue related to income received by the appellant in F.Y. 2015-16. I have perused copy of sample invoice submitted by the appellant for the amount Rs. 8,78,000/- (Bill No. 006 dated 09.05.2016) issued to Suryam Infrastructure –Suryam Elegance, and find



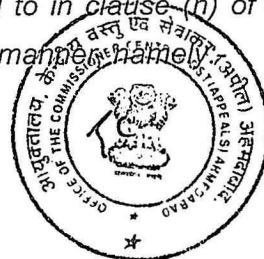
that the said income received by the appellant pertains to repairing work provided to builder. As such, out of the total impugned value amounting to Rs. 18,08,318/- received by the appellant in F.Y. 2015-16, they have received the remaining amount of Rs. 9,12,318/- from Suryam Reality, Saral-Boski Developers etc. and Rs. 18,000/- from AKZO Nobel India Limited which is evident from 26AS Form. In the above discussion I find that the amount of Rs. 17,90,318/- (Rs. 8,78,000/- + Rs. 9,12,318/-) was received by the appellant after rendering the service which I believe, falls under the ambit of work contract service as per the clause 54 of Section 65B of the Act, which is as follows:

“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”

9. In view of the above discussion I find that the appellant is providing repairing and maintenance services to the builders and therefore it will fall under the ambit of work contract service. The appellant have agreed that the service which they had been providing to the builders will be liable to service tax on the abated value after the deduction of admissible 30% of abatement in terms of Rule 2A(ii) of service tax (Determination of valuation) Rule, 2006, which reads as under:

“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:-



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

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

(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent of the total amount charged for the works contract;

(B) in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy percent of the total amount charged for the works contract;

(C) in case of other works contracts, not covered under sub-clauses (A) and (B), including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable property, service tax shall be payable on sixty per cent. of the total amount charged for the works contract;

10. In F.Y. 2015-16 the appellant has received amount of Rs. 18000/- from AKZO Nobel India Limited which is evident from 26AS Form and from the submission wherein the appellant contended that the said income had been received towards commission income. I believe the income is also liable to service tax. Therefore the appellant is liable to pay service tax Rs. 1,84,327/- with interest at the applicable rate under section 75 of the Act. The gist in respect of details of the income received by the appellant in F.Y. 2015-16 is illustrated with the help of table.

For F.Y. 2015-16

Sr.No.	Particulars	Value
1.	Value of the income received from the Suryam Reality, Saral-Boski Developers etc.	9,12,318/-
2.	Value of the income received from the Suryam Infrastructure –Suryam Elegance (Bill No. 006 dated 09.05.2016)	8,78,000/-

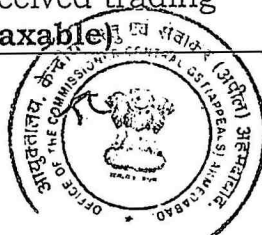


3.	Total	17,90,318
4.	Less: Abatement @ 30 % of Rs. 17,90,318/-	5,37,095
5.	Net Taxable Value	12,53,223
6.	Commission Income received from AKZO Nobel India Limited	18,000
7.	Total Taxable Value (Sr. 5 + Sr. 6)	12,71,223
8.	Service tax to be paid @ 14.5%	1,84,327

11. Now I take up the issue related to income received by the appellant in F.Y. 2016-17. I find that the adjudicating authority demanded on the value received amounting to Rs. 19,71,250/- considering all the income received under the head of sale of service in F.Y. 2016-17 on the basis of information received from Income tax department. In this regards the appellant vehemently contended that while filing Income Tax Return for F.Y. 2016-17, all the income had been recorded under the head of sale of service; though they have received Rs. 11,89,690/- from sale of goods out of total Rs. 19,71,250 shown in ITR. I have gone through P & L Account for F.Y. 2016-17 submitted by the appellant wherein the income of Rs. 11,89,690/- had been booked towards sale of goods. The appellant also submitted several sample copies of invoices revealing that the appellant were engaged in the activity of selling of goods or trading. I peruse 26AS form submitted by the appellant which shows that the appellant had received income Rs. 7,25,000/- from Survyra Reality, which was contested by the appellant as income received under the head of works contract service and Rs. 28,280/- from AKZO Nobel India Limited, which was declared income received towards commission head by the appellant. The gist in respect of details of the income received by the appellant in F.Y. 2016-17 is illustrated with the help of table.

For F.Y. 2016-17

Sr.No.	Particulars	Value
1.	Value of the income received from the Survyra Reality etc.	7,53,280/-
2.	Value of the income received trading activities (Non taxable)	11,89,690/-

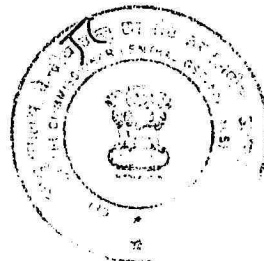


3.	Total	19,42,970/-
4.	Less: Abatement @ 30 % of Rs. 7,53,280/-	2,25,984/-
5.	Net Taxable Value (Sr. 1 - Sr. 4)	5,27,296/-
6.	Commission Income received from AKZO Nobel India Limited	28,280/-
7.	Total Taxable Value (Sr. 5 + Sr. 6)	5,55,576/-
8.	Service tax to be paid @ 15%	83,336/-

12. In view of the above discussion I find that in F.Y. 2016-17 the appellant are receiving income from activities (1) providing repairing and maintenance services to the builders, (2) engaging in trading activities (3) commission income. Therefore the appellant is liable to pay service tax Rs. 83,336/- with interest at the applicable rate under section 75 of the Act.

13. It is observed that the contention of the appellant is that service provided by way of works contract service which are liable to service tax, which they are in accord to pay service tax thereon. On the basis of submission made by the appellant and evidence produced by them, I find that it is not disputable that the appellant is liable to pay service tax only on the 70% of the value. The appellant is also liable to pay service tax on the income received under the head of commission income. The appellant is not liable to pay service tax on the income received from trading of goods during F.Y. 2016-17 in terms of section 66D(e) of the Act. I agree with the adjudicating authority in terms of demand of penalty under section 77(1) for not applying and taking service tax registration. On going through the submission of the appellant I find that they are agreeing with the penalty imposed.

14. In respect of penalty imposed under section 78 of the Act I uphold the order of adjudicating authority. I find that the Appellant have not obtained service tax registration; have not furnished any information to the department about the taxable



service which clearly amounts to suppression of fact, with intent to evade the payment of Service tax. The Appellant intentionally suppressed the facts from the department regarding providing of taxable service and the consideration received against the taxable service provided. In this context I find in several judicial pronouncements where it has been held that extended period limitation for raising the demand can be invoked.

- Hon'ble High Court of Bombay in the case of M/s Tigrania Metal and Steel-2015 (326)E.L.T.650 (Bom)
- The Hon'ble CESTAT Ahmedabad in the case of M/s Sabarmati Network Systems Pvt. Ltd. - [2012(27) S.T.R. (35) (Tri. Ahmd.)
- The Hon'ble CESTAT Ahmadabad in the case of M/s Sunil Hi-tech Engineers Ltd. - [2014(36) S.T.R. 408 (Tri. Mumbai)

15. In view of the above judicial pronouncements it is quite clear that the period of limitation is not hit by limitation and the extended period as provided under the provision of section 73(1) of the Act has correctly and legally been invoked in the instant case.

16. I also find that since the demand in the instant case is beyond the limitation period penalties are not imposable, is not tenable. In this regard I find that the adjudicating authority discussed the issue of invoking of extended period. I observe the Appellant did not declare the taxable value in the department. As per Section 70 of the Act the Appellant was required to self assess the service tax liability and file ST-3 Returns. Evidently they intentionally avoid the compliance of statutory provisions. I observe that the Appellant did not either obtain service tax registration even though they had been engaged in supplying taxable service neither did deposit any service tax, reflecting clear malafide intention of the Appellant to evade the service tax



liability and payment. Thus the argument of the Appellant regarding non applicability of penalty under section 78 does not sustain. The act of the Appellant shows utter disregard to the provision of service tax and established the mens-rea at the end of Appellant. Thus invoking 73(1) of the Act for invoking extended period for the demand confirmed by the adjudicating authority and penalties under the provision of Act have been legally invoked and imposed in the instant case. The fact of providing of taxable service during the period i.e. October-2014 to March-2015 under demand for the impugned period would not have been disclosed had the department not started the investigation in the instant case, the nonpayment would have been undetected. Thus it is very much clear that there is suppression of fact with intent to evade payment of tax. In this regard I find that in the case of Dharamendra Textile Processors-[2008 (231) E.L.T. 3 (S.C.)], the Hon'ble Supreme Court came to the conclusion that the section provides for a mandatory penalty and leaves no scope of discretion for imposing lesser penalty. I find it is the responsibility of the Appellant to correctly assess and discharge their tax liability. The suppression of taxable value, nonpayment and short payment of tax, clearly show that they were aware of their tax liability but chose not to discharge it correctly instead tried to mislead the department which undoubtedly bring out the willful mis-statement and fraud with an intent to evade payment of service tax. Thus, if any of the circumstances referred to in Section 78 of the Act are established, the person liable to pay duty would also be liable to pay a penalty equal to the duty so determined.

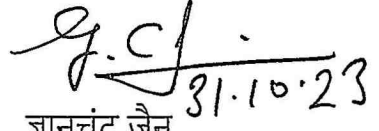
17. When the demand sustains there is no provision of escape from interest under section 75 of the Act and the Appellant failing to pay service tax on the taxable service are liable to pay the tax along with interest at the applicable rate such willful suppression automatically attracts mandatory penalty.



18. In the light of the above discussion, the appeal is partly allowed. The demand of Service Tax for the F.Y. 2015-16 and F.Y. 2016-17 is reduced to Rs. 2,67,663/- along with interest under section 75, Penalty of Rs. 10,000/- under section 77(1) and equal penalty of Rs. 2,67,663/- under section 78 of the Finance Act, 1994.

19. अपीलकर्ता द्वारा दायर अपील का निपटान उपरोक्त तरीके से किया जाता है।

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


31.10.23
ज्ञानचंद जैन
आयुक्त (अपील्स)

Dated: 31.10.2023

Attested

(अमरेंद्र कुमार)
अधीक्षक (अपील्स)
सी.जी.एस.टी, अहमदाबाद

BY RPAD/ SPEED POST

To

M/s Munesh Motilal Rajput,
B-60, Vinayak Park Society,
Nani Canal Road, Vastral ,
Ahmedabad -382 418

The Assistant Commissioner
CGST & Central Excise
Division I, Ahmedabad South.



Appellant

Respondent

Copy to :

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner Central GST, Ahmedabad South.
3. The Asstt. Commissioner, CGST, Division-I, Ahmedabad

South.

4. The Asstt. Commissioner (HQ System) Central GST,
Ahmedabad South (for uploading the OIA).

✓ 5. Guard File.

6. P.A. File.

