



**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 - टेलीफैक्स 07926305136



**DIN: 20231164SW000000A670**

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/3495/2023 / २६६० - ६A
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-171/2023-24  
दिनांक Date: 23-11-2023 जारी करने की तारीख Date of Issue 29.11.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Gyan Chand Jain, Commissioner (Appeals)
- ग Arising out of OIO No. 273/DC/NIRAV/Div-6/A/bad-South/PMT/2022-23 दिनांक: 03.02.2023  
passed by The Deputy Commissioner (Tech.), CGST, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address  
**Appellant**  
M/s. Patel Nirav Himanshubhai (HUF),  
A-4, Shurnagar Apartment-1,  
Chandravihar Society, Nr. Polytechnic,  
Ambawadi, Ahmedabad-380015.

वैदी व्यक्तित्व 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:**

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

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

(ii) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डारगार या अन्य कारखाने में या किसी भण्डारगार से दूसरे भण्डारगार में माल ले जाते हुए मार्ग में, या किसी भण्डारगार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डारगार 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 an 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 को उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हों।

- (c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.
- (1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। इसके साथ खाता ड्र. 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 होता रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम 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 मामलों में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004
- (B) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> Floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. In case of appeals other than as mentioned in para-2(i) (a) above.



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

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scripitoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्कनियम 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.8.50 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.8.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन और 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, 1992 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.

- 10 सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(शिरस्टेट)के प्रतिअपीलो के मामले में कर्तव्यमांग(Demand) एवं दंड(Penalty) का 10% पूर्व जमा करना अनिवार्य है। हाताकि, 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) डॉड 11D के तहत निर्धारित राशि;
- इस लिखा गलत सेनवैट क्रेडिट की राशि;
- इस सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

→ यह पूर्व जमा 'राशि अपील' में पहले पूर्व जमा की तुलना में, अपील' शामिल 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**

The present appeal has been filed by M/s. Patel Nirav Himanshubhai (HUF), A-4, Shurnagar Apartment-1, Chandravihar Society, Nr. Polytechnic, Ambawadi, Ahmedabad-380015 (hereinafter referred to as "*the Appellant*") against Order-in-Original No. 273/DC/NIRAV/Div.-6/A<sup>bad</sup> South/PMT/2022-23 dated 03.02.2023 (hereinafter referred to as "*the impugned order*") passed by the Deputy Commissioner (Technical), Central GST & Excise, Ahmedabad South (hereinafter referred to as "*the adjudicating authority*").

2. Briefly stated, the facts of the case are that the Appellant were holding Service Tax Registration No. AAJGO8325FSD001. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT), it was noticed that the Appellant had declared less gross value in their Service Tax Returns (ST-3) for the F.Y. 2015-16 as compared to the gross value declared by them in their Income Tax Return (ITR)/TDS Returns. Accordingly, it appeared that the Appellant had mis-declared the gross value of sales of service in the service tax returns and short paid /not paid the applicable service tax. The Appellant were called upon to submit copies of relevant documents for assessment for the said period. However, the Appellant neither submitted any required details/documents explaining the reason for the difference raised between gross value declared in ST-3 Returns and Income Tax Return (ITR)/TDS nor responded to the letter in any manner.

2.1. Subsequently, the Appellant were issued Show Cause Notice No. V/WS06/O&A/SCN-430/2020-21 dated 25.12.2020 wherein it was proposed to:

a) Demand and recover an amount of Rs. 6,49,718/- for F.Y. 2015-16 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 (hereinafter referred to as 'the Act').

- b) Impose penalty under the provisions of Section 77 (1) (c), 77(2) and 78 of the Act.
3. The SCN was adjudicated vide the impugned order wherein:
- a) The demand of service tax amounting to Rs. 6,49,718/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Act along with interest under Section 75 of the Act for the period from F.Y. 2015-16.
  - b) Penalty amounting to Rs. 10000/- was imposed under Section 77(1)(c) of the Act.
  - c) Penalty amounting to Rs. 10000/- was imposed under Section 77(2) of the Act.
  - d) Penalty amounting to Rs. 6,49,718/- was imposed under Section 78 (1) of the Act.
4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, inter alia, on the following grounds:
- During the Financial Year 2015-16, the Appellant had provided construction service only to two parties namely (1) M/s Nirav Patel and (2) M/s Shrinivas Organisers Pvt. Ltd.
  - The Appellant had discharged service tax liability on payment received from M/s Shrinivas Organisers Pvt. Ltd. whereas claimed exemption in relation to service provided to Mr. Nirav Patel from payment of service tax as per entry no. 14 and 29(h) of Notification No. 25/2012-ST dated 20.06.2012.



- During F.Y. 2015-16, turnover was reported in ST-3 by the Appellant was Rs. 77,86,500/-, whereas value reflected in Form 26AS is Rs. 1,21,17,950/-. The details of income over which demand was raised by adjudicating authority are given in tabulated form as under:

Period	Name of service recipient	Income as per 26AS	Income as per ST-3	Differential income for demand of Service Tax
2015-16	Nirav Patel	39,00,000	77,86,500	43,31,450
	Shrinivas Organisers Pvt. Ltd.	82,17,950		
	<b>Total</b>	1,21,17,950		

- The differential income of Rs. 43,31,450/- is bifurcated in following two parts: (1) Value of Rs. 39,00,000/- (2) Remaining value of Rs. 4,31,450/-.
- Value of Rs. 39,00,000/- is towards the construction of single residential units in the name of owner of piece of land, Mr. Bhavin H. Mehta, who had allotted original Work Contract Service to Mr. Nirav Patel in relation to instruction of his own single residential unit and in turn Mr. Nirav Patel has sub-contracted the said work to the Appellant M/s. Nirav Patel (HUF), which is exempt from payment of service tax as per entry no. 14 and 29(h) of Notification No. 25/2012-ST dated 20.06.2012. The relevant extract of entry no. 14 and 29(h) of Notification 25/2012-ST dated 20.06.2012 is reproduced as under:-

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

(a).....



(b) "a single residential unit otherwise than as a part of residential complex"

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;"

- As regards to the remaining value of Rs. 4,31,450/- the Appellant have submitted that it is on account of error in filing TDS returns by M/s Shrinivas Organisers Pvt. Ltd. During the F.Y. 2015-16 the summary of payment by the Appellant from M/s. Shrinivas Organisers Pvt. Ltd. is as under:

Date	Invoice raised	Amount received in bank (Rs.)	TDS deducted	Total Receipt
01.09.2015	18,67,950	0	18,680	18,680
05.09.2015	[18,67,950] (Credit Note)	0	0	0
11.09.2015		15,00,000	0	15,00,000
06.11.2015		9,90,000	10,000	10,00,000
26.11.2015		9,90,000	10,000	10,00,000
09.01.2016		14,85,000	15,000	15,00,000
15.03.2016		28,21,500	28,500	28,50,000
Total		0 77,86,500	82,180,	78,68,680

- In view of the above table there is no invoice issued by the Appellant to M/s Shrinivas Organisers Pvt. Ltd., however Rs. 77,86,500/- was received in bank and Rs. 82,180/- was received through TDS. Accordingly total amount received was Rs. 78,68,680/-. In ST-3 Return the Appellant have discharged service tax liability to the extent of Rs. 77,86,500/- which is evident from para 3 of SCN. The Appellant agrees that service tax liability on Rs. 82,180/- towards amount received through



TDS seems pending and agrees to pay service tax with interest and penalty thereon.

- M/s. Nirav Patel (HUF) has received Rs. 77,86,500/- in Bank and Rs. 82,180/- in form of TDS receivable in Form 26AS. Accordingly, the Appellant have received total Rs. 78,68,680/- (Rs. 77,86,500/- (+) Rs. 82,180/- ) from M/s Shrinivas Organisers Pvt. Ltd. (SOPL). However, M/s SOPL erroneously reported Rs. 82,17,950/- in filing their TDS return in place of Rs. 78,68,680/-. The reason for such error was that the Appellant had originally raised invoice of Rs. 18,67,950/- on 01.09.2015 against which on 05.09.2015 credit note with same amount was also issued. Later on 15.09.2015 Rs. 15,00,000/- was received by the Appellant. But in place of reporting Rs. 15,00,000 on TDS portal, M/s SOPL erroneously reported Rs. 18,67,950/- instead of Rs. 15,00,000/-.
- Accordingly, from Rs. 82,17,950/- [Figure of Form 26AS], Rs. 18,67,950/- needs to be reduced due to wrong entry of which credit note was issued and Rs. 15,00,000/- needs to be added on which TDS has not been reported. Further, Rs. 18,680/- [1% of Rs. 18,67,950/-] needs to be added because Nirav Patel HUF have received this amount in the form of TDS. The net correct amount comes to Rs. 78,68,680/- [82,17,950 (-) 18,67,950 (+) 15,00,000 (+) 18,680/-]
- The Appellant compared Rs. 78,68,680 with Rs. 77,86,500 on which service tax is paid in Form ST-3, then difference in taxable value comes to Rs. 82,180/- on which service tax at 14.5% payable comes to Rs. 11,916/- which the Appellant agrees to pay along with applicable interest and penalty. As a result, in place of Rs. 4,31,450/- [82,17,950 (-) 77,86,500], tax on Rs. 82,180/- is payable.





- Further, the Appellant contested that Show Cause Notice is barred by time limitation. The department may within thirty month from the relevant date service notice as per the provision of Section 73(1) of the Act. If short payment at the end of the Appellant involves intention to evade the tax then SCN under section 73 can be issued within 5 years from the relevant date. The figures reflected in Form 26AS are already available with department from the concerned year itself as the same is based on the filling done under IT Act by the deductor. Therefore, the said information has never been suppressed by the Appellant from the department. Further the Appellant have also not indulged in any fraud or collusion or willful misstatement as the given figures were reported in Form 26AS and IT Return. Hence it is not correct to say that the Appellant have evaded the tax sought to be recovered for the reason that the basis for such recovery is on the figures of Form 26AS already available for verification by the department within the normal period of limitation. Hence, it is evident that in such facts and circumstances, the invocation of the extended period shall not be in accordance with the law and hence the SCN in question is required to be vacated. The Appellant rely the Circular No. 1053/02/2017-CX dated 10.03.2017 which is master circular on SCN, adjudication and recovery.
- In the instant case since the demand is primarily based on IT Returns and form 26AS, the information of provision of service is well within the knowledge of Department. As IT Returns and information therein forms part of the government records, alleging suppression is not proper. The concept of "suppression" amounts to that which one is legally to state but one intentionally or deliberately or consciously does not state. Therefore, where there was no deliberate action on the part of the Appellant to hide the facts from departmental authorities, there is no question of invocation of extended period of limitation.



- The entire demand is raised by invoking the extended period of limitation under the provision of Section 73 on the ground of alleged "suppression". The Appellant have never suppressed any facts from the department. Reliance is placed on a decision of the Hon'ble Supreme Court in the case of (1) Uniworth Textiles Ltd. v. CCE [2013]39 STT 58/31 taxmann. Com 67, (2) Anand Nishikawa Co. Ltd. v. CCE [2005]2 STT 226. The same view was also taken by the Hon'ble High Court of Calcutta in case of Simplex Infrastructure Ltd. v. Commissioner of Service Tax, Kolkata [2016]69 taxmann. Com 97 (Calcutta)/[2016] 42 STR 634 (Calcutta)/[2017]43GSTR 505 [Calcutta]/[2016]93VST 10 (Calcutta)[07-04-2016]. The Appellant also rely on the decision of the Hon'ble CESTAT in the case of Pappu Crane Service v. Commisisoner (Service Tax Appeal No. 70707 of 2018-[DB].
- SCN is issued on presumption of provision of Taxable service. In this regard the Appellant rely on the decision of the Hon'ble Tribunal in the case of Shubham Electricals v CCE 2015(40) S.T.R. 1034(Tri.-Del) (2) Kush Construction v. CGST NACIN 2019 (24)GSTL 606 (Tri.-all.).
- Whenever in a case the judgment of higher Courts are cited the court is bound to consider the judgment of higher courts and to follow the same in principle.
- As the Appellant is not required to discharge any liability due to nature of service provided is exempt and there is no violation of pay of the provision of law and thus penalty under section 77(2) of the Act is not payable.
- Penalty under section 77(1)(c) is attracted only when there is failure on the part of the Appellant to submit the required documents against any enquiry. The Appellant has never received any enquiry letter rather direct SCN was served.



Additionally to levy penalty under section 77(1)(c), the department shall furnish an evidence as relied upon documents or otherwise that letter has been service for which reply is pending from the Appellant. Without any documentary evidence levying penalty is against the principle of natural justice and needs to be dropped.

5. Personal hearing in the case was held on 19.10.2023. Shri Meet Jadawala, C.A. appeared on behalf of the Appellant for personal hearing and reiterated the contents of the written submission and requested to allow the appeal.

6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the Appeal Memorandum as well as those made during the course of personal hearing and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the Appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period 2015-16.

7. I find that the main contention of the Appellant are that whether the Appellant are liable to pay service tax on differential income arrived due to reconciliation of Income declared by the Appellant in Service Tax Returns and ITR data provided by Income Tax Department, in context of which the Appellant have held that the present demand on differential Income of Rs. 43,31,450/- includes income of Rs. 39,00,000/- received towards the construction of single residential units in the name of owner of piece of land, Mr. Bhavin H. Mehta, who had allotted original Work Contract Service to Mr. Nirav Patel in relation to instruction of his own single residential unit and in turn Mr. Nirav Patel has sub-contracted the said work to the Appellant M/s. Nirav Patel (HUF), which is exempt from payment of service tax as per entry no. 14 and



29(h) of Notification No. 25/2012-ST dated 20.06.2012. The relevant extract of entry no. 14 and 29(h) of Notification 25/2012-ST dated 20.06.2012 is reproduced as under:-

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

(a).....

(b) "a single residential unit otherwise than as a part of residential complex"

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;"

8. I have gone through the documents submitted by the Appellant in support of the exempted service amounting to Rs. 39,00,000/- out of total value Rs. 43,31,450/- viz. (1) Declaration from Shri Bhavin H. Mehta stating that Shri Nirav Patel have constructed his single residential unit, (2) copy of Index II & electricity Bill in the name of Shri Bhavin H. Mehta in support of justification that single individual bungalow was constructed, (3) copy of bank statement of Shri Nirav Patel along with ledger of Shri Bhavin Mehta in the books of Shri Nirav Patel, (4) Copy of sample invoices raised by Shri Nirav Patel to Shri Bhavin Mehta, (5) CA Certificate stating that construction service provided by Sh. Nirav Patel to Sh. Bhavin Mehta is for single residential unit which is exempt from service tax (6) copy of Form 26AS of F.Y. 2015-16 (7) copy of sub-contract letter between the Appellant (Shri Nirav Patel HUF ) and Shri Nirav Patel (8) copy of sample invoices raised by the Appellant to Sh. Nirav Patel.

9. Reading the aforesaid provision and perusing all the above said documents submitted by the Appellant I find that the service value for the amount of Rs. 39,00,000/- out of total value of service



Rs. 43,31,450/- is exempted in terms of the entry no. 14 and 29(h) of Notification 25/2012-ST dated 20.06.2012. On verification of documents submitted by the Appellant and demand raised vide the Order-in-Original by the adjudication authority, I find the amount of Rs. 39,00,000/- received from Shri Nirav Patel as shown in TDS (Form 26AS) for F.Y. 2015-16 over which demand of service tax was raised is nothing but income collected by rendering construction service pertaining to a single residential unit, which is exempted under entry no. 14 and 29(h) of Notification 25/2012-ST dated 20.06.2012 and demand raised accordingly is legally wrong and not sustainable.

10. Now I take up the matter pertaining to the remaining amount of 4,31,450/- collected out of Rs. 43,31,450/- by the Appellant. I have gone through the documents submitted by the Appellant in support of the submission that it is on account of error in filing TDS returns by M/s Shrinivas Organisers Pvt. Ltd. These documents are (1) copy of ledger of the Appellant in the books of M/s Shrinivas Organisers Pvt. Ltd. (2) Declaration from M/s Shrinivas Organisers Pvt. Ltd. that they have made error in filing TDS Returns.

11. On carefully going through the submission and documents submitted by the Appellant I observe that the Appellant have received Rs. 77,86,500/- in Bank and Rs. 82,180/- in form of TDS in Form 26AS. Accordingly, the Appellant have received total Rs. 78,68,680/- from M/s Shrinivas Organisers Pvt. Ltd. (SOPL). However, M/s SOPL erroneously reported Rs. 82,17,950/- in filing their TDS return in place of Rs. 78,68,680/-. Now, if I compare Rs. 78,68,680/- with Rs. 77,86,500/- on which service tax is paid in Form ST-3, then difference in taxable value comes to Rs. 82,180/- on which service tax at 14.5% payable comes to Rs. 11,916/- which the Appellant agrees to pay along with applicable interest and penalty.

12. I agree with the adjudicating authority in terms of demand of penalty under section 77(1) and 77(2) of the Act. In respect of



penalty imposed under section 78 of the Act I uphold the order of adjudicating authority. However as the demand is sustainable only for Rs. 11,916/- the penalties need to be reduced/decided accordingly.

13. 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.

14. In the light of the above discussion, the appeal is partly allowed. The demand of Service Tax for the F.Y. 2015-16 is reduced to Rs. 11,916/- along with interest under section 75, Further, Penalty of Rs. 2,500/- under section 77(1)(c), penalty of Rs. 2,500/- under section 77(2) and equal penalty of Rs. 11,916/- under section 78 of the Finance Act, 1994 is upheld.

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

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

*G.C.J.*  
22.11.23

ज्ञानचंद जैन  
आयुक्त (अपील)

Date : 23.11.2023

Attested

*Shri. J. S. D. Ahmadaabadi*  
श्री. जे. एस. टी. अहमदाबाद  
अधीक्षक (अपील)



**By RPAD / SPEED POST**

To,  
M/s. Patel Nirav Himanshubhai (HUF),  
A-4, Shurnagar Apartment-1,

Appellant

Chandravihar Society, Nr. Polytechnic  
Ambawadi, Ahmedabad-380015

The Deputy Commissioner (Technical),  
CGST & Excise, Ahmedabad South.

Respondent

Copy to:-

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



