आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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By SPEED POST

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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3285/2023 /1148 - 152
(ख)	अपील आदेश संख्याऔर दिनांक / Order-In –Appeal and date	AHM-EXCUS-001-APP-194/23-24 and 18.12.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	03.01.2024
(ङ)	Arising out of Order-In-Original No. 260/WS08/AC/KSZ/2022-23 dated 15.02.2023 passed by The The Assistant Commissioner, CGST Division-VIII, Ahmedabad South.	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Shubham Engineering & Construction C/303/304, Titanium City Centre, Anandnagar Road, Satellite, Ahmedabad - 380051

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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 पूवोक्त 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 :-

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 : -

(क) 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 मे हो माल की प्रकिया के दौरान हुई हो।

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.

(ख) 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 मामलें में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट 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।

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.

(2) 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 दिनाँक 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 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 :-

(2) उक्तलिखित परिच्छेद 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।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2ndfloor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

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. Registar 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 ओदश 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 हैं ।

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 scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए ।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो 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)।

(1) खंड (Section) 11D के तहत निर्धारित राशि;
(2) लिया गलत सेनवैट क्रेडिट की राशिय;
(3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा ' लंबित अपील' में पहले पूर्व जमा की तुलना मेंए 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.

(6) (i) 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. Shubham Engineering & Construction, C/303/304, Titanium city centre, Anandnagar Road, satellite, Ahmedabad-380051(hereinafter referred to as "*the appellant*") against Order-in-Original No. 260/WS08/AC/KSZ/2022-23 dated 06.02.2023(hereinafter referred to as "*the impugned order*") passed by the Assistant Commissioner, Central GST, Division-III 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. ACWFS3765QSD001. 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.

3. Subsequently, the appellant were issued a Show Cause Notice bearing No. CGST/WS0803/O&A/TPD(15-16)ACWFS3765Q/2020-21/5446 dated 21.12.2020 wherein it was proposed to:

a) Demand and recover an amount of Rs. 13,26,103/- for F.Y. 2015-16 under proviso to Sub Section (1) of Section 73 of the Act 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, and 78 of the Act.

4. The Show Cause Notice was adjudicated ex-parte vide the impugned order by the adjudicating authority wherein:

a) The demand of service tax amounting to Rs. 13,26,103/- was confirmed under section 73(1) of the Act by invoking extended period of 5 years along with interest under section 75 of the Act.

b) Imposed Penalty amounting to Rs. 13,26,103/- was confirmed under 78 of the Act.

c) Imposed Penalty of Rs. 10,000/- was confirmed on the appellant under section 77(2) of the Act.

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

- That the first and foremost that the impugned order has been passed in violation of the principles of natural justice. The show cause notice and the impugned order has been issued on the basis of assumptions and presumptions and the same is required to be quashed and set aside on this ground only. The nature of activities undertaken by them have not been taken on record and the revenue has merely assumed that the same appears to be covered under the definition of service. The revenue ought to have brought evidence on record so as to establish that the income was towards providing a service as defined under Section 65B (44) of the Finance Act, 1994. However the impugned order and show cause notice utterly fails to bring anything on record to establish that the income earned by us is towards providing a taxable service as envisaged under Section 65B (51) of the Finance Act, 1994.

The Appellant would like to rely on the Circular dated 26-10-2021 - Clarification regarding Indiscrete Show Cause Notice (SCNs) issued by Service Tax Authorities.

- It is a well settled principle of law that a show cause notice should clearly spell out the charges so as to accord an opportunity to the noticee to defend the allegations leveled. Such vague and cryptic show cause notice is not sustainable as held by the Supreme Court and High Court in the following case laws: 1) M/s Brindavan Beverages reported at 2007 (213) ELT 487 (SC) 2) M/s Royal Oilfield Pvt. Ltd. reported at 2006 (194) ELT 385 (Bom) 3) M/s B Lakshmichand reported 1983 (12) ELT 322 4) M/s H.M.M Ltd. reported at 1995 (76) ELT 497 (SC) 5) M/s Amrit Foods reported at 2005 (190) ELT 433 (SC) 6) M/s Madhur Hosiery Industries reported at 2006 (200) ELT 6.

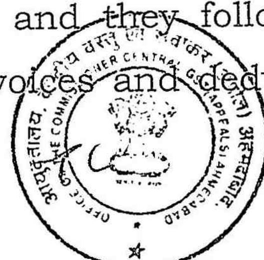
- It is a well settled principle of law that the onus is on the revenue to establish that taxable services have been provided by an assessee and the income earned is towards such taxable services. The Appellant relies on the tribunal decision in the case of In the case of M/s Hindustan Coca Cola Beverages P Ltd reported at 2016 (42) ELT 696 (T), (2) M/s Coca Cola India Inc. reported at 2016 (42) STR 42(T).

- Service tax cannot be levied merely on assumptions and presumptions and the onus to prove that the receipts were against a taxable service lies on the department. In the instant case, such onus has not been discharged and the Show cause notice is not sustainable on merits. Similar observations were made by the Commissioner (Appeals) in the case of M/s Purni Ads Pvt. Ltd. which were upheld by the Tribunal as reported at 2010 (19) STR 242 (T).

- It is undisputed fact that the service tax is required to be paid on the value of taxable services received. In the present case, the adjudicating authority had proceeded surprisingly on the basis of income shown in balance sheet as well as on the basis of total receipts appearing on the books of account without verifying whether the same was received towards the value of taxable service or otherwise. It was tried to reconcile the income shown in the balance sheet. It is a major failure that the element of service tax contained in the amount of debtors and creditors had escaped proper consideration while reconciliation. The gross income was devoid of service tax whereas the amount of creditors/debtors was containing element of service tax and therefore both could not be worked out together to arrive at actual receipts on reversal basis. Further, the method adopted for reconciliation of the income was incomplete and faulty as it had not considered the amount of bad debt and credit notes issued in relation to the taxable service which were required to be deducted from the gross income shown in the balance sheet.

- We would also like to mention that the Service Tax Audit of the appellants has already been carried out by the Audit Officers, Central Tax, Circle - V, Audit, Ahmedabad for the period FY 2015-16 and 2016-17. Also the audit officers has already computed reconciliation of income shown in financial statements with ST-3 returns and the differential liability was paid during audit along with interest and penalty. As the service tax audit for the FY 2015-16 was already carried out the show cause notice for the same period and on same subject matter cannot be issued again.

- There will be always mismatch in the taxable receipts as per ST-3 returns and as per 26AS statements. In case of the appellants the Contractee is IOCL and they follow different accounting policy i.e. they book invoices and deduct TDS on



the same when the invoice are approved by the concerned departments of IOCL. However the appellants follow accrual basis of accounting and paid service tax on the invoices which are booked in book of accounts and issued to IOCL during the FY 2015-16. Hence it is not necessary that the bills issued by the appellants are approved by IOCL in the same financial year. Thus as and when invoices are approved by IOCL, TDS is deducted at the time of release of payments and the same is reflected in the 26AS Statements of the appellants. Hence it can be concluded that the total income as per ST-3 returns cannot be compared with taxable receipts shown in 26A Statements.

- The appellant would like to mention that the appellants are engaged in providing works contract services which includes material and labour both. Hence the service tax is paid by following Rule 2A Service Tax (Determination of Value) Rules, 2006.

- the value of service portion in the execution of a works Contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely: 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.

- 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 percent of the total amount charged for the works contract.

- Thus as per Rule 2A (ii) Service Tax (Determination of Value) Rules, 2006 the appellants are eligible for 60% abatement in case of works contract for original works and 30% abatement in case of works contract for repairs, maintenance etc. Further IOCL is a business entity. Hence as per Notification No. 30/2012 Dt. 20-06-2012 the appellants are liable to pay only 50% of service tax on services provided by them and balance 50% of the services are to be paid by service recipient. In the ST-3 returns the appellant have shown that they have provided services under "Works Contract" and that they were liable to pay service tax of 50%. it is only for this reason that the taxable value shown in ST-3 returns is only 40/70% of the total gross income received for providing service whereas, total invoice amount i.e. the gross amount received from the service receiver has been shown in 26AS. It is only for this reason that the taxable value shown in ST-3 returns is only 40/70% of the total gross income received for providing service whereas, total invoice amount i.e. the gross amount received from the service receiver has been shown in 26AS. However there is no short payment of service tax. The appellant have provided reconciliation of Service tax in Annexure-I which is tabulated as under:

<u>TABLE-A</u>

Description	*Income from New contract*	*Income from Maintenance*	*Total*
Works Contracts Receipts	*29499566*	*34240867*	*63740433*
Abatements 60% or 30%	*17699740*	*10272260*	*27972000*

Taxable Value 40% or 70%	*11799826*	*23968607*	*35768433*
50% paid by the appellant	*5899913*	*11984304*	*17884217*
Net taxable value as per Books			*63764774*
Taxable value as per ST-3 Returns filed			*63740433*
Difference as per Books and ST-3			*24341*

➢ It is submitted that with effect from 01.07.2017, the provisions of Chapter V of the Finance Act, 1994 have been omitted vide Section 173 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"). Further, the Constitution (One Hundred and First Amendment) Act, 2016 was notified on 08.09.2016. Section 7 of the Constitution Amendment Act omitted Article 268A of the Constitution. Section 7 came into force on 16.09.2016. Article 268A was titled as under:

268A: Service tax levied by Union and collected and appropriated by the Union and the States

Consequently, Entry 92C of List 1 of Seventh Schedule of the Constitution was also omitted vide Section 17 of the Constitution Amendment Act (which came into force on 16.09.2016). Entry 92C read as- "taxes on service". Thus, with effect from 16.09.2016, the levy of Service Tax was done away with. Vide Section 173 of the CGST Act, a saving clause was inserted as under:

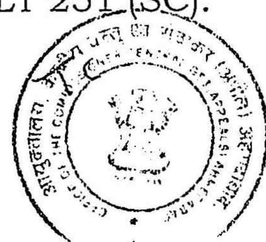
173: Save as otherwise provided in this Act, Chapter V of the Finance Act, 1994 shall be omitted.

➢ It is pertinent to refer to the provisions of the General Clauses Act 1897, which says the rights accrued under the prior legislation and empowers the Government to initiate any proceedings under the repealed legislation Section 6 of the General Clauses Act, 1897. It is submitted that the aforesaid provision contained in General Clauses Act, 1897, saves the

rights accrued under the old legislation and gives the power of the legislature to initiate proceedings in respect of any liability incurred under the old statute. However, in the case of Rayala Corporation v. Directorate of Enforcement, 1969 (2) SCC 412, a five-judge bench of Hon'ble Supreme Court held that Section 6 of the General Clauses Act, 1897 applies only to repeals and not omission.

- It is submitted that in the present case, the legislature has omitted the provisions of Chapter-V of the Act. Thus, Section 6 of the General Clauses Act, 1897 shall not be applicable in view of the judgment of Hon'ble Supreme Court in Rayala Corporation (Supra). Therefore, no proceedings can be initiated, and no liability can be fastened by the Government in respect of the any alleged violation or non-compliance of the provisions contained in Chapter-V of the Act, as omitted vide Section 173 of the CGST Act, 2017. The initiation of the impugned proceedings is without jurisdiction, unconstitutional and erroneous and is liable to be set aside on this ground alone.

- Demand only for the normal period is available to the department. Without any deliberate intention to withhold/ suppress information from the Department, the invocation of extended period of limitation cannot be justified. In the present case, the appellant have not committed any positive act to suppress information from the Department with the intent to evade payment of service tax. In this regard the appellant relied on the judgment of the Hon'ble Supreme court in the cases of (i) M/s Anand Nishikawa Co. Ltd. vs. CCE Meerut report at 2005 (188) ELT 149 (SC), (ii) M/s Padmini Products Ltd. vs. CCE reported at 1989(43)ELT 195(SC), (iii) CCE vs. Chempahar Drugs &b Liniments 1989 (40) ELT 276 (SC), (iv) Gopal Zarda Udyog vs. CCE 2005(188)ELT 251 (SC).



6. Personal hearing in the case was held on 26.10.2023. Shri Bhavesh T. Jhalawadia, Chartered Accountant appeared on behalf of the appellant for personal hearing and reiterated the contents of the written submission and requested to allow the Appeal.

7. The appellant have submitted documents viz. (I) service tax audit report No. 50/2017-18 dated 23.08.2018 for the F.Y. 2015-16 and 2016-17, (II) copy of ST-3 returns with challans paid, (III) copy of Audited Balance Sheet, (IV) copy of Reconciliation. The appellant have also submitted following documents in their additional submission dated 23.11.2023 (I) sample copies of work order, (II) sample copies of invoices regarding the works contract service provided by the appellant.

8. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum 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 FY 2015-16.

9. It is observed that the appellant are registered with the department and were filing ST-3 returns. However, the present demand has been raised based on ITR data provided by Income Tax Department. The SCN alleges that the appellant had not discharged the service tax liability on the differential income noticed on reconciliation of ITR and ST-3 Returns. It is observed that the demand of service tax was raised against the Appellant merely on the basis of the data received from the Income Tax department. However, the data received from the Income Tax department cannot form the sole ground for raising the demand of service tax.

10. The appellant submitted that Audit Commissionerate, Ahmedabad has already conducted audit for the period 2015-16 to 2016-17 and the audit officers has already computed reconciliation of income shown in financial statements with ST-3 returns and the differential liability was paid during audit along with interest and penalty. As the service tax audit for the F.Y. 2015-16 was already carried out vide the issued Final Audit Report 50/2017-18 dated 23.08.2018, the show cause notice for the same period and on same subject matter cannot be issued again.

11. Coming to the merit of the case I find that the main contention of the appellant are that whether they 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 they provided services on which 60% and 30% abatement was available as per Rule 2(ii) (A) (B) of service tax (Determination of Value) Rules, 2006, which reads as under:

> *2(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;*

11.1. The appellant have further submitted that they were required to pay 50% of the service tax liability and rest of 50% liability was to be paid by the service receiver. I have perused the relevant provision under the Notification No. 30/2012-ST dated 20.06.2012 which reads as under:

I. The Taxable Services:-
(v) provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers to any person who is not in the similar line of business or supply of manpower for any purpose or service portion in execution of works contract by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the taxable territory to a business entity registered as body corporate, located in the taxable territory;

(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely:-

Sr. No.	*Description of a service*	*Percentage of service tax payable by the person providing service*	*Percentage of service tax payable by the person receiving the service*
9	*in respect of services provided or agreed to be provided in service portion in execution of works contract*	*50%*	*50%*

12. I have perused the copies of works contract and copies of invoices and reconciliation of service tax as shown in Table-'A' submitted by the appellant. I found that they were providing repair maintenance service and fabrication & installation service, inspection and maintenance service etc. to various service

recipients. The appellant contended that they provided works contract service including original and maintenance and repair works and accordingly claim 30% abatement in such cases where they provided repair and maintenance work and 60% abatement in such cases where they provided original work. The appellant failed to provide supportive documents before the issuance of impugned order. They have submitted invoices which need to be verified by the adjudicating authority. I also found that the appellant are claiming they were liable to pay service tax only to extent of 50% of the taxable value emerged after abatement from gross value in the light of Notification No. 30/2012-ST dated 20.06.2012. However, on reading the relevant provision under Notification No. 30/2012-ST dated 20.06.2012, it appears that the appellant would be liable to pay service tax on the 50% of taxable value only when they provided services to business entity registered as body corporate. Going through the submission of the appellant it is not clarified as to whether they had provided service to body corporate or otherwise. This aspect needs to be verified.

13. Considering the facts of the case as discussed hereinabove and in the interest of natural justice, I am of the considered view that the case is required to be remanded back to the adjudicating authority (i) to consider the claim of the appellant as to whether they provided works contract service; (ii) to consider the claim of the appellant that there is no reconciliation difference in respect of Service Tax paid and payable; (iii) to consider the claim of the appellant as to whether they were liable to pay 50% of the taxable value or otherwise; (iv) to consider as to whether the service recipient are business entity registered under corporate or otherwise, and decide the case afresh by following the principles of natural justice accordingly.

14. In view of the above discussion, I remand the matter back to the adjudicating authority to reconsider the issue a fresh and pass a speaking order after following the principles of natural justice.

15. अपील कर्ता 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.

18.12.23
ज्ञानचंद जैन
आयुक्त (अपील्स)

Date : 18.12.2023

Attested

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

By RPAD / SPEED POST

To,
M/s. Shubham Engineering & Construction — Appellant
C/303/304, Titanium city centre,
Anandnagar Road, satellite,
Ahmedabad-380051.

The Assistant Commissioner, — Respondent
Central GST, Division-VIII,
Ahmedabad South.

Copy to :

1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
2) The Commissioner, CGST, Ahmedabad South
3) The Assistant Commissioner, Central GST Division-VIII, Ahmedabad South
4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South (For uploading the OIA)
5) Guard File
6) PA file