



सत्यमेव जयते

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

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DIN : 20230564SW0000924014

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/2863/2022 11572-76

ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-30/2023-24  
दिनांक Date : 11-05-2023 जारी करने की तारीख Date of Issue 17.05.2023

आयुक्त (अपील) द्वारा पारित  
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of OIO No. CGST/WS07/O&A/OIO-077/AC-RAG/2022-23 दिनांक: 02.08.2022  
passed by Assistant Commissioner, Division VII, CGST, Ahmedabad South

घ अपीलकर्ता का नाम एवं पता Name & Address

**Appellant**

M/s Bhupat Laxmanbhai Mulayasiya  
Proprietor of M/s BL Enterprise  
B/403, Jay Tirth, Near Karnavati Flat,  
Jodhpur Gam Road, Satellite,  
Ahmedabad

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

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

भारत सरकार का पुनरीक्षण आवेदन :

**Revision application to Government of India:**

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

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 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 भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to other factory or from one warehouse to another during the course of processing of the goods in a house 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 मामले 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 हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004

(a) 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 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 अनुसूचि-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 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.

29<sup>th</sup> 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:

- (cxcvi) amount determined under Section 11 D;  
(cxcvii) amount of erroneous Cenvat Credit taken;  
(cxcviii) 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. Bhupat Laxmanbhai Mulayasiya, Proprietor of M/s. B. L. Enterprise, B/403, Jay Tirth, Near Karnavati Flat, Jodhpur Gam Road, Satellite, Ahmedabad (hereinafter referred to as "the appellant") against Order-in-Original No. CGST/WS07/O&A/OIO-077/AC-RAG/2022-23 dated 02.08.2022 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division VII, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. BIMPM6349H. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15 and F.Y. 2015-16, it was noticed that the appellant had earned an income of Rs. 62,75,663/- during the F.Y. 2014-15 and Rs. 29,97,020/- during the F.Y. 2015-16, which was reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)". The appellant were called upon to submit copies of Balance Sheet, Profit & Loss Account, Income Tax Return, Form 26AS, for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice No. V/WS07/O&A/SCN-9/BIMPM6349H/2020-21 dated 23.09.2020 demanding Service Tax amounting to Rs. 12,25,225/- for the period FY 2014-15 and FY 2015-16, under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; recovery of late fees under Rule 7C of the Service Tax Rules, 1994; and imposition of penalties under Section 77(1) and Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 4,84,096/- was confirmed 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 for the period from FY 2014-15 and FY 2015-16, extending benefit of abatement @60% as per Rule 2A(ii)(A) of Service Tax (Determination of Value) Rules, 2006. The adjudicating authority has dropped the remaining amount of demand of Service Tax. Further (i) Penalty of Rs. 4,84,096/- was also imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(a) of the Finance Act, 1994; and (iii) Penalty of Rs. 80,000/- was imposed on the appellant under Section 70 of the Finance Act, 1994 read with Rule 7C of Service Tax Rules, 1994.



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

- The appellant were engaged in providing works contract service in relation to various Government projects directly or as a sub-contractor.
- The appellant is mainly engaged in business of undertaking contract of works contract services for construction of civil structures and construction of road related works for government. The appellant's total turnover for providing contracting services related to works contract services for construction of civil structure and construction of road to government for FY 2014-15 was Rs. 62,75,663/- & FY 2015-16 was Rs. 29,97,020/-.
- As regards FY 2014-15. as per the sale register, their income and its implication on service tax demand is as under:

Date	Name of party	Amount (in Rs.)	Nature of work done and remarks
18.05.2014	Gujarat State Civil Supply Corporation Ltd.	3,53,042/-	The work contract are provided by Governmental authority, i.e. Gujarat State Civil Supply Corporation Ltd., directly to the appellant. The appellant provided work contract service to the Governmental authority as a sub-contractor of M/s. Design Code.
12.06.2014	M/s. Design Code (Prop. Arvindbhai Patel)	5,42,918/-	
28.06.2014	Gujarat State Civil Supply Corporation Ltd.	6,77,124/-	
19.09.2014	M/s. Design Code (Prop. Arvindbhai Patel)	2,32,680/-	
20.01.2015	M/s. B. J. Odedra	9,59,596/-	Office of Executive Engineer, R& B Division (Government of Gujarat), Surendranagar allotted work order to M/s. B.J. Odedra for construction of school (educational establishment) on 11.02.2013. In turn M/s. B. J. Odedra sub-contracted part work order to the appellant. The original work order between R&B division and M/s. B.J. Odedra and a letter issued by M/s. B.J. Odedra to the
31.03.2015	M/s. B. J. Odedra	30,30,303/-	





			<p>appellant in relation to sub-contract along with copy of invoice raised by the appellant are submitted along with appeal memorandum.</p> <p>Thus, this service provided by the appellant exempted as per Sr. No. 12(c) read with Sr. No. 29(h) of the Notification No. 25/2012-ST dated 20.06.2012.</p>
21.03.2015	M/s. Shital Sign Pvt. Ltd.	4,80,000/-	<p>Office of Executive Engineer, Patnagar Yojna Bhavan, Gandhinagar allotted work order to M/s. Ashish Infracon Pvt. Ltd. for construction of road and road furniture signages on 10.12.2014. In turn M/s. Ashish Infracon Pvt. Ltd. contracted part work order to M/s. Shital Signs Pvt. Ltd. on 15.12.2014 which in turn M/s. Shital Signs Pvt. Ltd. subcontracted the said work order to the appellant. The original work order between Office of Executive Engineer and M/s. Ashish Infracon Pvt. Ltd.. a letter cum PO issued by M/s. Ashish Infracon Pvt. Ltd. to M/s. Shital Signs Pvt. Ltd. in relation to sub-contract and a letter issued by M/s. Shital Signs Pvt. Ltd. in relation to subcontracting part work of construction of road and its signages along with copy of invoice raised by the appellant are submitted along with appeal memorandum.</p> <p>Thus, this service provided by the appellant exempted as per Sr. No. 13(a) read with Sr. No. 29(h) of the Notification No. 25/2012-ST dated 20.06.2012.</p>
<b>Total</b>		<b>62,75,663/-</b>	

- As regards FY 2015-16, as per the sale register, their income and its implication on service tax demand is as under:

Date	Name of party	Amount (in Rs.)	Nature of work done and remarks
29.03.2016	M/s. Shital Sign Pvt. Ltd.	29,51,000/-	National Highways Authority of India (NHAI), a Governmental Authority, allotted work order to M/s. Sadbhav Engineering Ltd. for construction of road and road furniture signages on 09.10.2013. In turn M/s. Sadbhav Engineering Ltd. contracted part work order to M/s.
31.03.2016	M/s. Shital Sign Pvt. Ltd.	46,020/-	



			<p>Shital Signs Pvt. Ltd. on 01.02.2016 which in turn M/s Shital Signs Pvt. Ltd. subcontracted the said work order to the appellant. The original work order between NHAI and M/s. Sadbhav Engineering Ltd., Work order issued by M/s. Sadbhav Engineering Ltd. to M/s. Shital Signs Pvt. Ltd. in relation to subcontract and a letter issued by M/s. Shital Signs Pvt. Ltd. in relation to subcontracting part work of construction of road and its signages along with copy of invoice raised by the appellant are submitted along with appeal memorandum.</p> <p>Thus, this service provided by the appellant exempted as per Sr. No. 13(a) of the Notification No. 25/2012-ST dated 20.06.2012.</p>
		<b>Total</b>	<b>'29,97,020/-</b>

- From the contracts it can be identified that, they have been allotted a works contract to construct road including construction of road furniture. school as educational establishment etc. These works contracts allotted to them were falling under exemption entries of Notification No. 25/2012-ST dated 20.06.2012 as mentioned above.
- Thus. it is clear that all the services provided by them during FY. 2014-15 and FY 2015-16 were exempt from services tax by virtue of various exemption entries as mentioned above, the appellant were not required to collect and pay service tax on the same. Thus, they have also not obtained any service tax registration during the same period.
- As per the provision of Section 73 of the Finance Act, 1994. if there is short payment of service tax then show cause notice under Section 73 can be issued within 30 months from the relevant date and if the said activity involves intention to evade the tax then show cause notice under Section 73 can be issued within 5 years from the relevant date. To extend the period of 30 months to 5 years, there has to be an intention to evade the payment of tax by way of fraud or wilful misstatement or suppression of facts etc. If the mens rea is absent then it is not open for adjudicating authority to invoke the extended period of time. The entire demand is raised by invoking the extended period of limitation under the proviso to Section 73 on the ground of alleged



'suppression'. However, they have never suppressed any facts from the department. In support of their aforesaid arguments, they have relied upon on following decision.

- a) Uniworth Textiles Ltd. v. CCE [2013] 39 SIT 58/31 taxmann.com 67.
- b) Anand Nishikawa Co. Ltd. v. CCE [2005] 2 STT 226
- c) Infinity Infotech Parks Ltd. v. Union of India [2015] 50 GT 622/55 taxmann.com 367
- d) Simplex Infrastructure Ltd. Vs Commissioner of Service Tax, Kolkata [2016] 69 taxmann.com 97

- As there is no tax payable by them, there is no liability on account of interest under Section 75 of Finance Act, 1994.
- As there is no tax payable there remains no question of imposing penalty under Section 78(1), 77(1)(a) and 70 of Finance Act, 1994.

4. Personal hearing in the case was held in virtual mode on 19.04.2023. Shri Meet Jadawala, Chartered Accountant, appeared on behalf of the appellant for personal hearing. He argued the issue on merits as well as on limitation. He reiterated submissions made in appeal memorandum.

5. 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 2014-15 & FY 2015-16.

6. I find that in the SCN in question, the demand has been raised for the period FY 2014-15 and FY 2015-16 based on the Income Tax Returns filed by the appellant. Except for the value of "Sales of Services under Sales / Gross Receipts from Services" provided by the Income Tax Department, no other cogent reason or justification is forthcoming from the SCN for raising the demand against the appellant. It is also not specified as to under which category of service the non-levy of service tax is alleged against the appellant. Merely because the appellant had reported receipts from services, the same cannot form the basis for arriving at the conclusion that the respondent was liable to pay service tax, which was not paid by them. In this regard, I find that CBIC had, vide Instruction dated 26.10.2021, 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."*

6.1 In the present case, I find that letters were issued to the appellant seeking details and documents, which were allegedly not submitted by them. However, without any further inquiry or investigation, the SCN has been issued only on the basis of details received from the Income Tax department, without even specifying the category of service in respect of which service tax is sought to be levied and collected. This, in my considered view, is not a valid ground for raising of demand of service tax.

7. I also find that the adjudicating authority, in the impugned order, has denied the exemption under Notification No. 25/2012-ST dated 20.06.2012 to the appellant, inter alia, holding that the appellant have not provided any work order and other relevant documents. I also find that the adjudicating authority has considered the service provided by the appellant as Work Contract Service and also extended benefit of abatement @60% as per Rule 2A(ii)(A) of Service Tax (Determination of Value) Rules, 2006 considering the work carried out by the appellant as Original work. The adjudicating authority has, while confirming the demand, held as under:

*"6.3 I find that noticee has not submitted copy of ITR, 26 AS for the financial years 2014-15 and 2015-16 evidencing receipts of payment from Government Department. I find that noticee has merely submitted letters obtained from M/s. B.J. Odedra, Junagadh, M/s. Shital Signs Pvt. Ltd., Ambli-Bopal Cross Roads, Ahmedabad and M/s. Ashish Infracon Pvt. Ltd., Ahmedabad claiming to be that noticee is a sub-contractor for the projects of these parties. The noticee has never ever bothered to put forth evidence showing that he is a sub-contractor of above parties providing construction services to Government, nor has noticee produced any evidence to show that M/s. Gujarat Civil Supplies Corporation Ltd. awarded works contract to them.*

6.4 I find from the reply of the noticee that he has simply submitted that his services are exempt from payment of Service Tax vide various entries of Notification No. 25/2012-ST dated 20.06.2012 but has miserably failed to bifurcate amounts of services purportedly provided service by him for a particular services.



6.5 In view of non-supply of required documents, as mentioned in the letters referred hereinabove as well as in the noticee, it is observed that evasive reply of the noticee forces me to think otherwise on account of non-supply of any evidence that construction services provided by noticee are exempt from payment of Service Tax. I, therefore, understand that noticee has failed to discharge Service Tax liability on the total incomes earned during financial years 2014-15 and 2015-16. During these financial years, noticee was required to pay Service Tax of Rs.4,84,096/- on the receipts of amounts received towards providing construction service as per following worksheet"

8. It is observed that the main contentions of the appellant are that (i) the demand of Service Tax for the period from April-2014 to September-2015 is barred by limitation even by invoking extended period of limitation and not sustainable; (ii) services provided by them to M/s. B.J. Odedra for construction of school (educational establishment), as a sub-contractor, is exempted as per Sr. No. 12(c) read with Sr. No. 29(h) of the Notification No. 25/2012-ST dated 20.06.2012; and (iii) services provided by them to M/s. Shital Signs Pvt. Ltd. for construction of Road, as a sub-contractor, is exempted as per Sr. No. 13(a) read with Sr. No. 29(h) of the Notification No. 25/2012-ST dated 20.06.2012.

9. As regards the demand of Service Tax for the period from April-2014 to September-2015, the appellant have contended that the demand is barred by limitation. In this regard, I find that the due date for filing the ST-3 Returns for the period April, 2014 to September, 2014 was 14<sup>th</sup> November, 2014 (as extended vide Order No. 02/2014-ST dated 24.10.2014). The appellant is not registered with the department. Therefore, considering the last date on which such return was required to be filed the SCN should have been issued by 13.11.2014. However, I find that the demand for the period April, 2014 to September, 2014 was issued on 23.09.2020, beyond the prescribed period of limitation of five years and is hit by limitation. I, therefore, agree with the contention of the appellant that the demand is time barred in terms of the provisions of Section 73 of the Finance Act, 1994. Therefore, the demand on this count is also not sustainable for the period from April, 2014 to September, 2014, as the same is barred by limitation. In this regard, I also find that the adjudicating authority has not taken into consideration the issue of limitation and confirmed the demand in toto.

10. As regards the demand of Service Tax for the period October, 2014 to March, 2015, for ease of reference, I reproduce the relevant provision of Sr. No. 12(c), 13(a) and 29(h) of Notification No. 25/2012-ST dated 20.06.2012 as amended, which reads as under:

*"Notification No. 25/2012-Service Tax dated 20th June, 2012*

*G.S.R. 467(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012- Service Tax, dated*



the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

1...

2... ..

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –

(a) [a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession]; \*\*\*\* omitted by Notification No. 6/2015-ST dated 01.03.2015 w.e.f. 01.04.2015

(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity

specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

(c) [a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;] \*\*\*\* omitted by Notification No. 6/2015-ST dated 01.03.2015 w.e.f. 01.04.2015

(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

(f) .....

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

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

.....

29. Services by the following persons in respective capacities –

(a) .....

(b) .....





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

10.1 On verification of the various documents provided by the appellant viz. Income Leger for the FY 2014-15; Form 26AS for the FY 2014-15; Work Order No. AB/TENDER/72 dated 11.02.2013 issued to M/s. B. J. Odedara, Junagadh issued by the Executive Engineer, R&B Division, Surendranagar; letter dated 25.02.2013 issued by M/s. B. J. Odedara, Junagadh to the appellant; RA Bill No. 3 dated 20.01.2015; and RA Bill No. 4 dated 31.03.2015 issued by the appellant to M/s. B. J. Odedara, Junagadh. I find that the appellant have carried out construction work of Model School Building, Limbdi as sub-contractor of M/s. B. J. Odedara, Junagadh during the relevant period. It is observed that the nature of service provided by the appellant are under the category of works contract service, which has been held by the adjudicating authority while considering the abatement granting to them. Thus, the appellant have provided services to the Government as sub-contractor and the said services are exempted as per Sr. No. 12(c) read with Sr. No. 29(h) of the Notification No. 25/2012-ST dated 20.06.2012.

10.2 On verification of the various documents provided by the appellant, viz. Income Leger for the FY 2014-15 and FY 2015-16; Form 26AS for the FY 2014-15 and FY 2015-16; Work Order No. AB/TC/6971/2014 dated 19.12.2014 issued to M/s. Ashish Infracon Pvt. Ltd., Ahmedabad issued by the Executive Engineer, Patnagar Yogna Division-1, Gandhinagar; Purchase Order dated 15.12.2014 issued by M/s. Ashish Infracon Pvt. Ltd., Ahmedabad to M/s. Shital Signs Pvt. Ltd., Ahmedabad; letter dated 11.12.2014 issued by M/s. Shital Signs Pvt. Ltd., Ahmedabad to the appellant; and Invoice dated 21.03.2015 issued by the appellant to M/s. Shital Signs Pvt. Ltd., Ahmedabad. I find that the appellant have provided services related to construction of various Roads at Gandhinagar, which are for use by general public, as sub-contractor, and such services were exempted under Sr. No. 13(a) of the Notification No. 25/2012-ST dated 20.06.2012.

10.3 On verification of the various documents provided by the appellant, viz. Income Leger for the FY 2014-15; Form 26AS for the FY 2014-15; Work Order No. AB/TC/6971/2014 dated 19.12.2014 issued to M/s. Ashish Infracon Pvt. Ltd., Ahmedabad issued by the Executive Engineer, Patnagar Yogna Division-1, Gandhinagar; Purchase Order dated 15.12.2014 issued by M/s. Ashish Infracon Pvt. Ltd., Ahmedabad to M/s. Shital Signs Pvt. Ltd., Ahmedabad; letter dated 11.12.2014 issued by M/s. Shital Signs Pvt. Ltd., Ahmedabad to the appellant; and Invoice dated 21.03.2015 issued by the appellant to M/s. Shital Signs Pvt. Ltd., Ahmedabad. I find that the appellant have provided services related to construction of various Roads at Gandhinagar, which are for use by general public, as sub-contractor and



such services provided by the appellant were exempted under Sr. No. 13(a) of the Notification No. 25/2012-ST dated 20.06.2012.

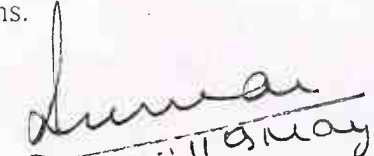
10.4 Similarly, on verification of the various documents provided by the appellant, viz. Income Leger for the FY 2015-16; Form 26AS for the FY 2015-16; Work Order dated 26.11.2012 issued by the NHAI to M/s. Sadbhav Engineering Ltd.; Work Order dated 01.02.2016 issued by M/s. Sadbhav Engineering Ltd. to M/s. Shital Signs Pvt. Ltd., Ahmedabad; letter dated 02.02.2016 issued by M/s. Shital Signs Pvt. Ltd., Ahmedabad to the appellant; and Invoice dated 29.03.2016 issued by the appellant to M/s. Shital Signs Pvt. Ltd., Ahmedabad. I find that the appellant provided service related to construction of Rajasmand-Bhilwara Road (NH758), which are for use by general public, as sub-contractor and such services provided by the appellant were exempted under Sr. No. 13(a) of the Notification No. 25/2012-ST dated 20.06.2012.

10.5 In view of the above, I am of the considered view that the services provided by the appellant during the period October-2014 to March-2016 were exempted from Service Tax as per provisions of Sr. No. 12(c) read with Sr. No. 29(h) and Sr. No. 13(a) of the Notification No. 25/2012-ST dated 20.06.2012. Thus, the appellant is not required to pay any service tax during the FY 2014-15 and FY 2015-16. Since the demand of service tax is not sustainable, there does not arise any question of charging interest or imposing penalties in the case.

11. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.


12. 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.

  
(Akhilesh Kumar) 11 May, 2023..  
Commissioner (Appeals)

Date : 11.05.2023

Attested

  
(R. C. Maniyar)  
Superintendent(Appeals),  
CGST, Ahmedabad

By RPAD / SPEED POST

To,  
M/s. Bhupat Laxmanbhai Mulayasiya,  
Proprietor of M/s. B. L. Enterprise.



Appellant

B/403. Jay Tirth. Near Karnavati Flat,  
Jodhpur Gam Road, Satellite.  
Ahmedabad

The Assistant Commissioner,  
CGST, Division-VII,  
Ahmedabad South

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Assistant Commissioner, CGST, Division VII, Ahmedabad South
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South  
(for uploading the OIA)

✓ 5) Guard File

6) PA file

