



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  
☎ 07926305065 - टेलिफैक्स 07926305136



DIN: 20230864SW000000A31D

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1249/2023 / 4612 - 17
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-78/2023-24  
दिनांक Date : 31-07-2023 जारी करने की तारीख Date of Issue 18.08.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of OIO No. 30/CGST/Ahmd-South/JC/SR/2022-23 दिनांक: 14.11.2022 passed by  
Joint Commissioner, CGST, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. MSKEL-ACC-JV,  
2nd Floor, MSK House,  
Near Passport Office,  
Panjarapole, Ahmedabad-380015.

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 :

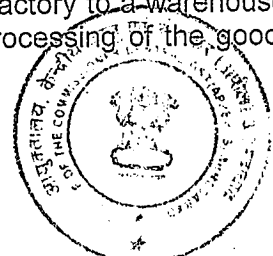
Revision application to Government of India:

(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 another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

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

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

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ.का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ 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 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 रु.6.50 पैसे कान्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

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

- 17 सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट),के प्रतिअपीलो के मामले में कर्तव्यमांग(Demand) एवं दंड(Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है [(Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

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

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

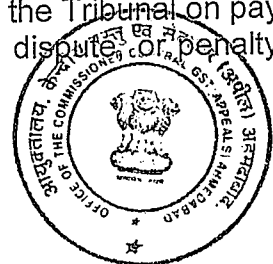
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

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

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

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

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



ORDER-IN-APPEAL

The present appeal has been filed by M/s. MSKEL-ACC-JV, 2<sup>nd</sup> Floor, MSK House, Near Passport Office, Panjarapole, Ahmedabad – 380015 (hereinafter referred to as “the appellant”) against Order-in-Original No. 30/CGST/Ahmd-South/JC/SR/22-23 dated 14.11.2022 issued on 21.11.2022 (hereinafter referred to as “the impugned order”) passed by the Joint Commissioner, Central GST, Ahmedabad South (hereinafter referred to as “the adjudicating authority”).

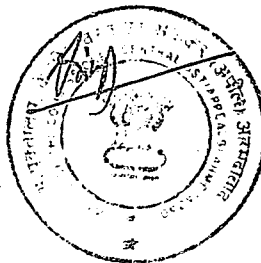
2. Briefly stated, the facts of the case are that the appellant are holding PAN No. AAEM0993K. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2014-15 to FY 2016-17, it was noticed that as per Form 26AS, the appellant had received an income of Rs. 13,26,12,789/- during the FY 2014-15, Rs. 8,59,39,188/- during the FY 2015-16 and Rs. 89,58,719/- during the FY 2016-17, from M/s. Gujarat Metro Rail Corporation (GMRC) Limited (Formerly known as M/s. Metro-Link Express for Gandhinagar and Ahmedabad (MEGA) Company Ltd.) on which they have deducted TDS under Section 194C of Income Tax Act, 1961.

2.1. The appellant has submitted that they have availed exemption under clause (a) of Sr. No. 14 of Notification No.25/2012-ST dated 20.06.2012 and produced a copy of an agreement between the appellant and M/s. Metro-Link Express for Gandhinagar and Ahmedabad (MEGA) Company Ltd., dated 28.09.2015, bearing contract no. MHGA/CONS/DEPOT/N-S/1 for construction of Boundary Wall, earth work and land/area-grading works at Gyaspur depot on North South corridor of Ahmedabad Metro Rail Project Phase-I, for a contract price of Rs. 25,32,97,234/- to be completed within 69 weeks from 04.06.2015 (commencement date), i.e. by 29.09.2016.

2.2 As per clause (a) under Sr. No. 14 of Notification No. 25/2012-ST dated 20.06.2012, the services by way of construction, erection, commissioning, or installation or original works pertaining to railways, including monorail or metro were exempt from service tax, during the period from 01.07.2012 to 29.02.2016. However, with effect from 01.03.2016 clause (a) under Sr. No. 14 of Notification No. 25/ 2012-ST dated 20.06.2012, was substituted vide Notification No. 09/2016-ST dated 01.03.2016, to read as under:-

*“(a) railways, excluding monorail and metro;*

*Explanation. -The services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro, where contracts were entered into before 1st March, 2016, on which appropriate stamp duty, was paid, shall remain exempt.”*

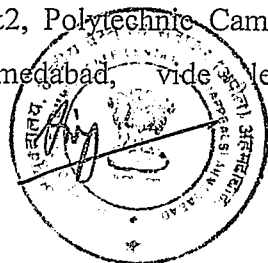


2.3 From the agreement between the appellant and M/s. Metro-Link Express for Gandhinagar and Ahmedabad (MEGA) Company Ltd., dated 28.09.2015, bearing contract No. MEGA/CONS/DEPOT/N-S/1, for Construction of Boundary all, earth work and land / area grading works at Gyaspur depot in North South corridor of Ahmedabad Metro Rail Project Phase-I, for a contract price of Rs. 25,32,97,234/-, to be completed within 69 weeks from 04.06.2015 (commencement date), i.e. by 29.09.2016, it appears that the appellant has provided services of the value of Rs. 25,32,97,234/-, during the period from 04.06.2015 to 29.09.2016. As the said work of Construction of Boundary Wall, earth work and land / area grading works at Gyaspur on South corridor of Ahmedabad Metro Rail Project Phase-I, appears to pertain to metro and therefore qualifies to be exempt from service tax during the period from 01.07.2012 to 29.02.2016, as per clause (a) under Sr. No. 14 of Notification No. 25/2012-ST dated 20.06.2012. However, with effect from 01.03.2016, vide Notification No. 09/2016-ST dated 01.03.2016, exemption to the services by way of construction, erection, commissioning, or installation of original works pertaining to monorail or metro was withdrawn. Accordingly, the services by way of construction, erection, commissioning or installation of original works pertaining to metro provided during the period effective from 01.03.2016 were rendered liable to service tax.

2.4 The above said activities, for a contract price, is carried out by the appellant at Ahmedabad for M/s. Gujarat Metro Rail Corporation (GMRC) Ltd., is a Service as defined under clause (44) of Section 65B of the Finance Act, 1994 and liable to service tax under Section 66B of the Finance Act, 1994 during the relevant period, up to 30.06.2017.

2.5 However, as per Explanation under clause (a) of Sr. No. 14 of Notification No. 25/2012-ST dated 20.06.2012, as amended vide Notification No. 09/2016-ST dated 01.03.2016, the services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro, where contracts were entered into before 1st March, 2016, on which appropriate stamp duty was paid, shall remain exempt. Therefore, for the purpose of exemption under Explanation to clause (a) of Sr. No. 14 of Notification No. 25/2012-ST dated 20.06.2012, as amended vide Notification No. 09/2016-ST dated 01.03.2016, the contract should have been entered into prior to 01.03.2016 and appropriate stamp duty should have been paid.

2.6 However, the appellant has failed to furnish any proof that the appropriate stamp duty in respect of such work orders has been paid by them. Further, to ascertain as to whether appropriate stamp duty has been paid or not, a reference was made to the Deputy Collector, Office of the Deputy Collector, Stamp, DC 1&2, Polytechnic Campus, Near-Post Office, Panjarapole Char Rasta, Ambawadi, Ahmedabad, vide letter from F. No.



GEXCOM/AE/INV/ST/358/2020-REV- Oo PR COMMR-CGSTAHMEDABAD(S) dated 25.02.2021 and reminder dated 09.03.2021, asking him to inform as to whether the said contract agreement has been registered or not and as to whether appropriate stamp duty as per law has been discharged on the said contract agreement or not. The Deputy Collector, Stamp Duty, Mulyankan Tantra-1, Ahmedabad, informed, vide his letter No. STAMP/1379 dated 23.03.2021 that the said contract agreement has NOT been registered with the office of the Sub-Registrar.

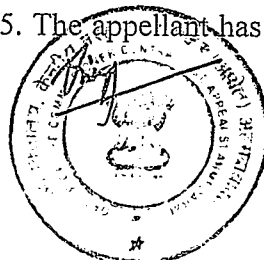
2.7 Therefore, the above said activities, for a contract price, is carried out by the appellant at Ahmedabad for M/s. Gujarat Metro Rail Corporation (GMRC) Ltd., is a Service as defined under clause (44) of Section 65B of the Finance Act, 1994 and leviable to service tax under Section 66B of the Finance Act, 1994 during the relevant period, up to 30.06.2017.

2.8 Subsequently, the appellant were issued Show Cause Notice No. STC/04-22/O&A/MASKEL/21-22 dated 22.04.2021 demanding Service Tax amounting to Rs. 1,57,31,336/- for the period 01.03.2016 to 30.06.2017, 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; and imposition of penalties under Section 77(1)(a), Section 77(2) and Section 78 of the Finance Act, 1994.

2.9 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 1,57,31,336/- 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. Further (i) Penalty of Rs. 1,57,31,336/- 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) of the Finance Act, 1994; and (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Rule 77(2) of the Finance Act, 1994.

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

- The appellant was engaged in providing construction services and are not registered under Service Tax for the same. Further the appellant is a Joint Venture between M/s. M. S. Khurana Engineering Ltd. and M/s. Avadhoot Construction Co. for the "Construction of Boundary Wall, earth work and land/area grading works at Gyaspur depot on North South corridor of Ahmadabad Metro Rail Project Phase-I" from M/s. Gujarat Metro Rail Corporation (GMRC) Limited (formerly known as M/s. Metro-Link Express for Gandhinagar & Ahmedabad (MEGA) Company Limited), as per Consortium Agreement dated 11.05.2015. The appellant has submitted that they have

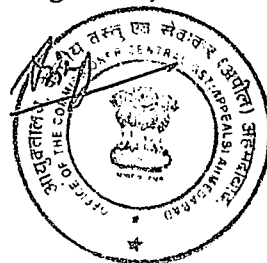


availed exemption under clause (a) of serial no. 14 of Notification No. 25/2012-ST dated 20.06.2012 and produced a copy of an agreement between the appellant and M/s. Metro-Link Express for Gandhinagar and Ahmedabad (MEGA) Company Ltd., dated 28.09.2015 bearing contract No. MEGA/CONS/DEPOT/N-S/1, for Construction of Boundary Wall, earth work and land/area-grading works at Gyaspur depot on North South corridor of Ahmedabad Metro Rail Project Phase-I, for a contract price of Rs. 25,32,97,234/-, to be completed within 69 weeks from 04.06.2015 (commencement date), i.e. by 29.09.2016.

- During the impugned period appellant has claimed exemption from service tax on their project income, on the basis of the clause (a) under Serial No. 14 of Notification No. 25/2012-ST dated 20.06.2012, the services by way of construction, erection, commissioning, or installation of original works pertaining to railways, including monorail or metro were exempt from service tax, during the period from 01.07.2012 to 29.02.2016. However, with effect from 01.03.2016, clause (a) under Serial No. 14 of Notification No. 25/ 2012-ST dated 20.06.2012 was substituted vide Notification No.09/2016-ST dated 01.03.2016.
- As per the stand of the department, with effect from 01.03.2016, the services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro, where contracts were entered into before 1st March, 2016, on which appropriate stamp duty, was paid, shall remain exempt.
- So it has been undisputed fact that contract has been entertained prior to 01/03/2016 i.e. 04/06/2015. Further regarding the appropriate stamp duty has been paid or not, The Deputy Collector, Stamp Duty, Mulyankan Tantra-I, Ahmedabad, informed, vide his letter no. STAMP/1379 dated 23.03.2021 has stated that:

*“stamp duty of Rs 100 /- is used in the contract, which is appropriate as per Article 5(g) of Gujarat Stamp Act 1958.”*

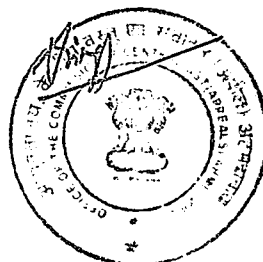
- So it has been specifically confirmed that appropriate stamp duty as applicable has been paid on the said agreement.
- Further there were no such condition in the explanation provided in the mega exemption notification, agreement has to be registered, so it has not been registered.



- Both the dual conditions have been satisfied, so appellant has rightly claimed exemption from service tax as applicable under Mega Exemption Notification No. 25/2012-ST.
- Only department has rejected the exemption on the reason being that agreement has not been registered it has not been sustainable & tenable. Condition mentioned in the notification has been rightly fulfilled, once condition of exemption has been fulfilled, putting other condition which has not been there in the notification & provision, the department act has been non tenable & unjustifiable. They relied upon on the following citation in support of their contention:
  - a) ANAND TISSUES LTD. Versus COMMISSIONER OF CENTRAL EXCISE,MEERUT-I – 2017 (352) EL.T. 225 (Tri. - All.)
  - b) COMMISSIONER OF C. EX., PONDICHERRY Versus HONDA SIEL POWER PRODUCTS LTD. –2015 (323) E.L.T. 644 (S.C.)
  - c) COMMISSIONER OF C. EX., JAMMU Versus ANPHARLABORATORIES PVT. LTD. –2019 (21) G.S.T.L. 546 (Tri. - Chan.)
- Notwithstanding anything above, the appellant submitted that there is calculation mistake of the department while determining the service tax liability in SCN. The service tax liability would be as under:

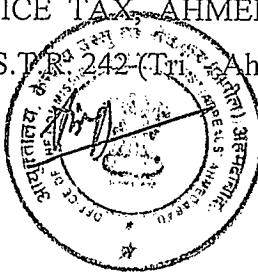
PARTICULARS	AMT
Total Work Executed	225279924
Less: Oct-15 to Feb-16 Turnover	54669464
Net Amount	170610460
Less: 60% abatement	102366276
Taxable Amount	68244184
Service Tax @15%	10236627.6

- So, from the above it is clear that even if the appellant was liable for service tax, the service tax liability would be Rs.1,02,36,628/-. So, the appellant requested to reduce the service tax liability from Rs.1,57,31,336/- to Rs.1,02,36,628/-.
- The impugned show cause notice cannot survive given the provision contained in paragraph 5 of the 2017 Master Circular [and the parimateria provision made in the 2015 instruction] for mandatory consultation with the assessee before issuance of a show cause notice.



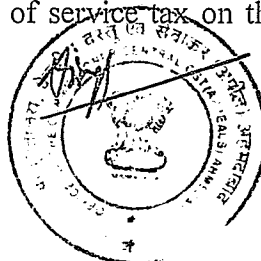


- It is, thus, appellant submitted that in terms of paragraph 5 of the 2017 Master Circular, the contesting respondents were mandatorily required to have a pre-show cause notice consultation with the appellant, which was not done in the present case. They submitted that since a pre-show cause notice consultation was not held, in terms of the judgment of the coordinate bench of CESTAT, rendered in Amadeus India Pvt. Ltd. vs. Principal Commissioner, Central Excise, Service Tax and Central Tax Commissionerate, 2019 SCC Online Del 8437, the impugned show cause notice dated 23.04.2019 deserves to be quashed.
- The only exception to the pre-show cause notice consultation is that either the case set up is one concerning preventive action or should be relatable to an offence committed by the appellant. The appellant submitted that their case falls in neither category.
- On the basis of the supra the contesting the department was mandatorily required to have a pre-show cause notice consultation with the appellant and that having not being done in the instant matter, the proceedings initiated by the department via the impugned show cause notice are non-est in law. In this regard they relied upon the following case laws:
  - a) Back Office It Solutions Private Limited Vs Union of India & Ors. (Delhi high Court)
  - b) Amadeus India Pvt. Ltd. Vs Principal Commissioner, Central Excise, Service Tax and Central Tax (Delhi High Court)
- The appellant submitted that the department has computed demand of service tax for the period of 2015-16 to 2017-18 (up to Jun-17) on the basis of 26AS data. Against which the appellant submitted that while considering the income with 26AS data books of accounts, the department has not taken into factual details regarding the appellant was providing exempt service as per clause (a) under serial no. 14 of Notification No. 25/2012-ST dated 20.06.2012. Without considering the factual details, the department has raised the demand which is not justifiable at all. In this regard they relied upon the following case laws:
  - a) REGIONAL MANAGER, TOBACCO BOARD Versus COMMR. OF C. EX., MYSORE – 2013 (31) S.T.R. 673 (Tri. - Bang.)
  - b) ANVIL CAPITAL MANAGEMENT (P) LTD. Versus COMMR. OF S.T., MUMBAI–2010 (20) S.T.R. 789 (Tri. - Mumbai)
  - c) COMMISSIONER OF SERVICE TAX, AHMEDABAD Versus PURNI ADS. PVT. LTD.–2010 (19) S.T.R. 242 (Tri. - Ahmd.)



- d) SIFY TECHNOLOGIES LTD. Versus COMMISSIONER OF  
SERVICETAX, CHENNAI-2009 (16) S.T.R. 63 (Tri. - Chennai)
- e) BHOGILALCHHAGULAL & SONS Versus COMMISSIONER OF S.T.,  
AHMEDABAD-2013 (30) S.T.R. 62 (Tri. - Ahmd.)

- The show cause notice covers the period of 01.04.2015 to 30.06.2017. The show cause notice has been issued on 22.04.2021. Thus, the show cause notice has invoked the extended period of limitation. The show cause has baldly alleged that the appellant has suppressed the information from the department. In this regard, the appellant submitted that the appellant is filing income tax returns & service tax returns regularly from time to time. The appellant submitted that the extended period of limitation cannot be invoked in the present case since there is no suppression, wilful misstatement on the part of the appellant.
- The show cause notice has proposed to impose penalty under Section 78 of the Finance Act, 1994. The appellant has demonstrated above that they have not suppressed any information from the department and there was no willful mis-statement on the part of the appellant. It is therefore clear from the statutory provisions that for imposing penalty under section 78 of the Act it has to be established that there is a short payment of service tax by reason of fraud, collusion, willful mis-statement, suppression of facts or contravention of any provisions of the Act or rules made there under with intent to evade payment of service tax. It is submitted that the Show Cause Notice has not given any reason whatsoever for imposing the penalty under Section 78 of the Act. The show cause notice merely alleging baldly that there is suppression on the part of the appellant. The present show cause notice has not brought any evidence/ fact which can establish that the appellant has suppressed anything from the department. Hence no case has been made out on the ground of suppression of facts or willful mis-statement of facts with the intention to evade the payment of service tax. Hence the present case is not the case of fraud, suppression, willful mis-statement of facts, etc. Hence penalty under section 78 of the Act cannot be imposed. Further, the appellant is entitled to entertain the belief that their activities were not taxable. That cannot be treated as suppression from the department. In support of their contention the appellant relied upon Hon'ble Gujarat High Court decision in case of Steel Cast Ltd. 2011 (21) STR 500 (Guj).
- The appellant submitted that the penalty under Section 77 is not imposable since there is no short payment of service tax. As per the merits of the case, the appellant is not liable for payment of Service tax. It is submitted that for imposing penalty, there should be an intention to evade payment of service tax on the part of the appellant.



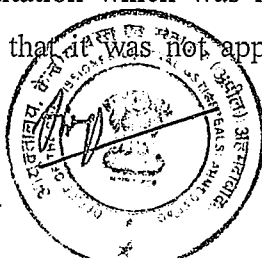
The penal provisions are only a tool to safeguard against contravention of the rules. The appellant submitted that they have always been and are still under the bonafide belief that they are not liable for payment of service tax. Such bonafide belief was based on the grounds given above. There was no intention to evade payment of service tax as mentioned in the ground above. Therefore, no penalty is imposable in the present case. In support of the above view, reliance is placed on the decision of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd. v The State of Orissa reported in AIR 1970 (SC) 253.

- Without prejudice to the above submissions, it is submitted that no case has been made out by the Department that the present demand of service tax is on account of fraud, collusion, willful mis-statement, suppression of facts or contravention of any of the provisions of Act or rules made there under with intention to evade the payment of service tax. Hence no interest or penalty under section 77 and 78 of the Act can be imposed on this ground itself.

4. Personal hearing in the case was held on 16.05.2023. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of the appellant for personal hearing and reiterated the submissions made in the appeal. He submitted a written submission along with letter dated 23.03.2021 from Deputy Collector, Stamp Duty Division-I, Ahmedabad during hearing.

4.1 The appellant in their additional submission made during the course of personal hearing, inter alia, re-iterated the submission made by them in the appeal memorandum.

4.2 Due to change in authority, a Personal hearing in the case was again held on 03.07.2023. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of the appellant for personal hearing and reiterated the submissions made in the appeal, at the time of earlier personal hearing and the additional submissions dated 16.05.2023. He submitted that the appellant had claimed exemption vide Sr. No. 14 of Notification No. 25/2012-ST as amended by Notification No. 9/2016-ST. The said notification, provided exemption for services pertaining to Mono Rail or Metro, where contracts were entered into before 1<sup>st</sup> March 2016, on which appropriate stamp duty was paid. He submitted that the Deputy Collector, Stamp Duty, Valuation Division I, Ahmedabad, vide letter dated 23.03.2021 to the adjudicating authority had clarified that the present contract executed with stamp duty of rupees hundred was appropriate as per article 5(g) of the Gujarat Stamp Act, 1958. However, the adjudicating authority has referred to some other provision of the Stamp Act, not applicable to appellant, for confirmation of demand and denial of the exemption. He also submitted that the appellant was not offered pre show cause notice consultation which was mandatory. However, the lower authority has brushed aside this saying that it was not applicable to the preventive



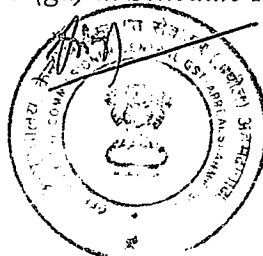
cases. He submitted that the present case was made on the basis of ITR data and was not a preventive case. He submitted that there was no suppression, extended period could not be invoked. Therefore, he requested to set aside the impugned order.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, additional submission; submission 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 FY 2015-16 and FY 2016-17.

6. It is observed that the main contentions of the appellant that (i) as per Sr. No. 14 of Notification No. 25/2012-ST as amended by Notification No. 9/2016-ST, the services provided by them, where contracts were entered into before 1<sup>st</sup> March 2016 and on which appropriate stamp duty was paid, were exempted from Service Tax; (ii) the Deputy Collector, Stamp Duty, Valuation Division I, Ahmedabad, vide letter dated 23.03.2021 to the adjudicating authority had clarified that the present contract executed with stamp duty of rupees hundred was appropriate as per article 5(g) of the Gujarat Stamp Act, 1958, however, the adjudicating authority has referred to some other provision of the Stamp Act, not applicable to appellant, for confirmation of demand and denial of the exemption; (iii) the appellant was not offered pre show cause notice consultation which was mandatory; and (iv) there was no suppression, extended period could not be invoked.

6.1 It is also observed that the adjudicating authority has in the impugned order observed that the appellant has failed to furnish any proof that the appropriate stamp duty in respect of such work orders has been paid by them. Further, he has observed that as the dual condition of the contract having been entered into before 01.03.2016 and payment of appropriate stamp duty on it, is not fulfilled in respect of the above contract agreement, the benefit of Sr. No. 14 of Notification No. 25/2012-ST dated 20.06.2012 as amended not been available to the appellant. The adjudicating authority has also observed that registration of contracts is a requirement for discharging levy of appropriate Stamp duty, which was not done by the appellant. The relevant portion of the impugned order read as under:

*"34.9 On a perusal of the contract entered into by the Noticee with M/s Metro-Link Express for Gandhinagar and Ahmedabad (MEGA) Company Ltd, I find that the same relates to giving authority or power to a developer, for construction on or development of Immovable property. Therefore, the contract is of a kind classifiable under the description specified in serial No.5 (ga) in Schedule I. Therefore, the subject*



*Contract agreement attracted levy of appropriate stamp duty at the rate of one rupee for every hundred rupee and part thereof, of the contract value mentioned in the agreement.*

34.10 *It is seen that the Noticee had used stamp duty of Rs 100/- and contended that appropriate stamp duty was paid and cited the letter dated 23.03.2021, received from the Deputy Collector, Stamps.*

34.11 *However, considering the value of work contract mentioned in the agreement, Stamp duty of Rs 100/-, paid by the Noticee cannot be a sufficient discharge of the liability under the Bombay Stamp Act, 1958. In fact, the Deputy Collector, Stamps, had mentioned in his letter that the document is not registered. This clarification itself is evidence to the requirement of registration of contracts with the State Registrar and payment of appropriate amount of Stamp duty as indicated in serial no. 5 (ga) of Schedule I, referred to above.*

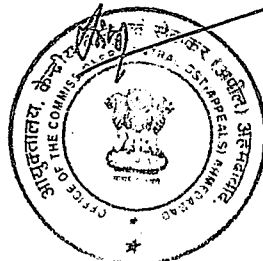
34.12 *I further find that the Noticee have, instead of accepting the liability, claimed that payment of Rs 100/- as Stamp duty is in proper discharge of liability which is a misstatement of the position of law. Such a claim has been made only to avoid paying Service tax, demanded in the Show Cause Notice. Therefore, the submission made by the Noticee that conditions of Notification have been fulfilled is a mis-statement of facts and cannot be accepted. Similarly, registration of contracts is a requirement for discharging levy of appropriate Stamp duty and so, it cannot be considered as an extra condition, not present in the Notification."*

7. For ease of reference, I hereby produce the relevant abstract of the 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... ..

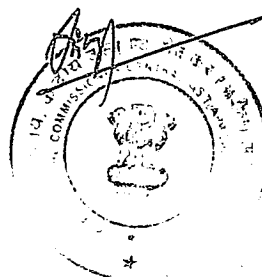
*14. Services by way of construction, erection, commissioning, or installation of original works pertaining to, -*

*[(a) railways, excluding monorail and metro;*

*Explanation. -The services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro, where contracts were entered into before 1st March, 2016, on which appropriate stamp duty, was paid, shall remain exempt.] substituted by Notification 9/2016- ST dated, 1.3.2016 w. e. f. 1.3.2016."*

8. I find that for the purpose of exemption under Explanation to clause (a) of Sr. No. 14 of Notification No. 25/2012-ST dated 20.06.2012, as amended vide Notification No. 09/2016-ST dated 01.03.2016, there are basically two conditions, i.e. (i) the contract should have been entered into prior to 01.03.2016; and (ii) appropriate stamp duty should have been paid.

9. I find that there is no dispute that the impugned contract have been entered prior to 01.03.2016, thus first condition fulfilled. As regard, the second condition, I find that to ascertain as to whether appropriate stamp duty has been paid or not, a reference was made by the department to the Deputy Collector, Office of the Deputy Collector, Stamp, DC 1&2, Polytechnic Campus, Near-Post Office, Pinjrapole Char Rasta, Ambawadi, Ahmedabad, vide letter from F. No. GEXCOM/AE/INV/ST 7358/2020-REV- 0/ PR COMMR-CGST AHMEDABAD(S) dated 25.02.2021 and reminder dated 09.03.2021, asking him to inform as to whether the said contract agreement has been registered or not and as to whether appropriate stamp duty as per law has been discharged on the said contract agreement or not. I find that the Deputy Collector, Stamp Duty, Mulyankan Tantra-I, Ahmedabad, informed, vide his letter no. STAMP/1379 dated 23.03.2021 that the said contract present contract executed with stamp duty of rupees hundred was appropriate as per article 5(g) of the Gujarat Stamp Act, 1958 and also informed that agreement has NOT been registered with the office of the Sub-Registrar. Thus, I find that when the Deputy Collector, Stamp Duty, Mulyankan Tantra-I, Ahmedabad, it self vide their letter dated 23.03.2021 confirmed that the said contract executed with stamp duty of rupees hundred was appropriate as per article 5(g) of the Gujarat Stamp Act, 1958, there is no question with regard to fulfillment of the second condition of the notification as enumerated above. I also find that the findings of the adjudicating authority citing other articles of Gujarat Stamp Act, 1958 and stating that the contract not registered hence the appellant not eligible for exemption benefit does not proper and legal and impugned order passed by the adjudicating authority not sustainable.

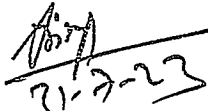


10. In view of above, I hold that the impugned order passed by the adjudicating authority, confirming demand of Service Tax from the appellant for the FY 2015-16 and FY 2016-17, is not legal and proper and deserves to be set aside. Since the demand of service tax is not sustainable on merits, I am not delving into the aspect of pre-consultation and limitation raised by the appellant. When the demand fails, there does not arise any question of charging interest or imposing penalty in the case.


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


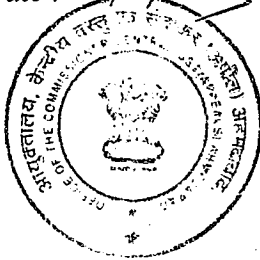
12. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।

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

  
(Shiv Pratap Singh)  
Commissioner (Appeals)

Attested

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

Date :   


**By RPAD / SPEED POST**

To,  
M/s.MSKEL-ACC-JV,  
2<sup>nd</sup> Floor, MSK House,  
Near Passport Office,  
Panjarapole, Ahmedabad – 380015

Appellant

The Joint Commissioner,  
CGST,  
Ahmedabad South

Respondent

Copy to :

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

- ~~6) Guard File~~
- 7) .PA file

