



सत्यमेव जयते

आयुक्त ( अपील ) का कार्यालय,  
Office of the Commissioner (Appeal),  
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद  
Central GST, Appeal Commissionerate, Ahmedabad  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015  
☎ 07926305065- टेलीफैक्स 07926305136



DIN: 20230864SW000000ECFA

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/2219/2023-APPEAL / 4786
- ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-68/2023-24  
दिनांक Date : 28-07-2023 जारी करने की तारीख Date of Issue 08.08.2023  
आयुक्त (अपील) द्वारा पारित  
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. 116/ADC/GB/2021-22 दिनांक: 31.03.2022 , issued by  
Additional Commissioner, CGST, Ahmedabad-North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant

M/s Shubh Construction, 8-Kameshwar Bungalow, Shayona City Road,  
Ghatlodia, Ahmedabad-380061

2. Respondent

The Additional Commissioner, CGST, Ahmedabad North 1<sup>st</sup> Floor, Custom  
House, Navrangpura, Ahmedabad - 380009

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) केंद्रीय 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 हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



- (क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।
- (A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।
- (c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.
- (1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष 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।

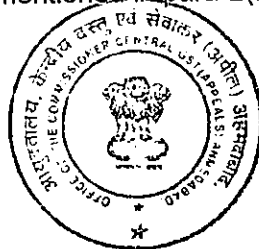
The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर 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, अपीलों 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 शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.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 is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (7) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) 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**

M/s. Shubh Construction, 8-Kameshwar Bunglow, Shayona City Road, Ghatlodia, Ahmedabad-380061 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 116/ADC/GB/2021-22 dated 31.03.2022, (in short '*impugned order*') passed by the Additional Commissioner, Central GST, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable services and were registered under Service Tax Registration No. AAQFS7725NSD001.

2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15 to 2016-17, it was noticed that the appellant has less declared the taxable value in their ST-3 Returns compared to the service related taxable value declared in their ITR/Form-26 AS. Letters were, therefore, issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for the F.Y. 2014-15 to F.Y. 2016-2017. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The detail of the differential income is as under;

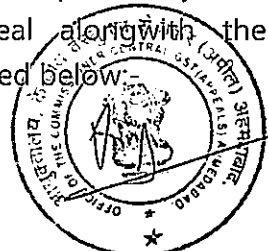
**Table-A**

F.Y.	Value as per B/S, P&L, Forem-26AS of ITR	Value declared in ST-3-Return	Differential Income	Service Tax liability
2014-15	86,94,792/-	-	86,94,792/-	10,74,676/-
2015-16	1,98,96,461/-	1,58,00,045/-	40,96,416/-	5,93,980/-
2016-17	2,59,01,537/-	-	2,59,01,537/-	38,85,231/-
			<b>Total</b>	<b>55,53,887/-</b>

2.1 Show Cause Notice (SCN) No.STC/15-98/OA/2020 dated 29.09.2020 was, therefore, issued to the appellant proposing recovery of service tax amount of Rs. 55,53,887/- not paid on the differential value of income received during the F.Y. 2014-15 to F.Y. 2016-17 along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 77(1) and Section 78 of the Finance Act, 1994 were also proposed.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs.55,53,887/-was confirmed alongwith interest. Penalty of Rs.10,000/- under Section 77(1) and penalty of Rs.55,53,887/-was also imposed under Section 78 of the F.A., 1994.

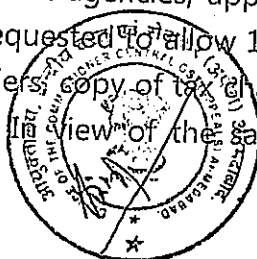
3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant preferred the present appeal alongwith the application seeking condonation of delay on the grounds elaborated below:



- They contended that they have provided Works Contract Service and in terms of Service Tax (Determination of Value) Rules, 2002 till September, 2014, they are eligible for abatement of 40% on construction of new immovable property; 70% on Works Contract relating to movable assets and 60% on the Other Works Contract. Thereafter, from 1.10.2014 onwards the abatement is available at 40% for Original Work (construction of new immovable property) and 70% for Other Works Contract.
- In terms of RCM, if the services are provided to a Company or a Body Corporates w.e.f. 01.07.2012 then 50% service tax liability shall be on the service recipient and remaining 50% in on the service provider.
- They submitted computation of service tax liability for the F.Y. 2015-16 and 2016-17; audited Profit & Loss Account Statement and Balance Sheet for the said period, Original Contract notes and Original Bill Copy, party ledgers, Service tax payment ledgers etc to the adjudicating authority seeking abatement under above provisions but were not considered while deciding the case.
- The demand for the F.Y. 2014-15 is time barred as was passed beyond the period of limitation.
- The order was passed ex-party and without considering the submissions of the appellant.

3.1 On going through the appeal memorandum, it is noticed that the impugned order was issued on 31.03.2022 and the same was received by the appellant on 03.04.2022. However, the present appeal, in terms of Section 85 of the Finance Act, 1994, was filed on 04.7.2022 i.e. after a delay of 30 days from the last date of filing appeal. The appellant have filed a Miscellaneous Application seeking condonation of delay, stating that the matter being very old it took some time for the appellant to gather the documents to support their cases and making payment of pre-deposit. They requested to condone the delay in filing the appeal as the delay is within the condonable period.

4. Personal hearing in the matter was held on 14.07.2023. Shri Krunal Prajapati, Chartered Accountant, appeared for personal hearing and reiterated the submissions made in the appeal and those in the COD application. He submitted that the appellant provided works contract services. Out of the same, some of the services were provided to government agencies which are exempt under the mega exemption notification. For the remaining works contract services they are eligible for the benefit of abatement and RCM. He also submitted that the show cause notice is not issued within the stipulated time hence the demand for the year 2014-15 is beyond period of five years. After excluding the time barred demand for 2014-15 and after granting exemption for service to government agencies, applying abatement and RCM, the tax liability is nil or very small. He requested to allow 10 days time for submission of additional documents such as work orders, copy of tax challans for the tax already paid detail worksheet for the tax liability etc. In view of the same he requested to set-aside or modify the impugned order.



5. Before taking up the issue on merits, I will first decide the Miscellaneous Application filed seeking condonation of delay. As per Section 85 of the Finance Act, 1994, an appeal should be filed within a period of 2 months from the date of receipt of the decision or order passed by the adjudicating authority. Under the proviso appended to sub-section (3A) of Section 85 of the Act, the Commissioner (Appeals) is empowered to condone the delay or to allow the filing of an appeal within a further period of one month thereafter if, he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of two months. Considering the cause of delay as genuine, I condone the delay of 30 days and take up the appeal for decision on merits.

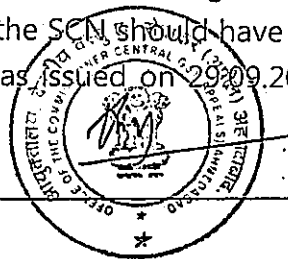
6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as the additional submissions made during personal hearing. The issue to be decided in the present case is as to whether the service tax demand of Rs.55,53,887/- confirmed alongwith interest and penalties in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise?

The demand pertains to the period F.Y. 2014-15 to F.Y.2016-17.

6.1 It is observed that the entire demand has been raised in the SCN based on the income data shared by the CBDT, on which no service tax was paid by the appellant. The matter was decided ex-parte as the appellant did not avail any of the personal hearing opportunities granted by the adjudicating authority nor submitted documentary evidence like works contracts, reconciliation statements. The adjudicating authority therefore decided the matter ex-parte considering the defence reply and evidences available on record.

6.2 The appellant however before the appellate authority has submitted the copy of Contracts, ST-3 return, Form -3CB, Balance Sheets to establish that the services rendered was Works Contract Service and hence are liable for abatement. Further they have also claimed that the demand for the F.Y. 2014-15 is time barred. In respect of the demand for the remaining period, considering the abatement and RCM liability, the tax liability is nil or very less.

7. Firstly, I will examine the time barred aspect. The appellant have strongly contended that the notice covering demand for the F.Y. 2014-15 is time barred. I find that the appellant are registered with the department and have been filing the statutory returns. However, they have not submitted the copy of ST-3 Return so considering the due date of filing of returns, I find that the ST-3 for 1<sup>st</sup> H.Y. was required to be filed on 25<sup>th</sup> October, 2014 which was extended to 14<sup>th</sup> November, 2014 vide Order No. 02/2014-ST dated 24.10.2014. Considering, 5yrs period from the due date of filing, the demand notice for 1<sup>st</sup> H.Y should have been issued latest by 13<sup>th</sup> November, 2019. Whereas, the present notice was issued on 29.09.2020, hence, I find that the demand for this period is hit by limitation, hence time bar. The due date filing ST-3 return for October, 2014 to March, 2015 was 25<sup>th</sup> April, 2015, so the SCN should have been issued within 24<sup>th</sup> April, 2020. Whereas, the present notice was issued on 29.09.2020 hence, I



find that the demand for this period is also hit by limitation, hence time bar. However, the demand for the remaining period for the F.Y. 2015-16 to F.Y. 2016-17 has been issued well within the period of limitation. I, therefore, find that the demand notice covering demand for the F.Y. 2014-15 is not sustainable in law hence set-aside on limitation.

8. To examine the issue on merits, I have gone through the copy of contract submitted by the appellant. Details of sample Work Orders are listed below:-

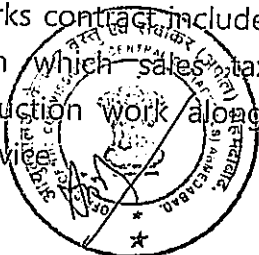
- a) In the Order Number SPCL/1221/2015-16/12/01 dated 03.04.2015, the appellant have been sub-contracted the work of providing, laying and installing membrane waterproofing works at M/s. Maruti Suzuki India Ltd., Hansalpur, by M/s. Shapoorji Pallonji Co. Pvt. Ltd. they also submitted Invoices raised in this regard to the main contractor, M/s. Shapoorji Pallonji Co. Pvt. Ltd., wherein they have charged 5.6% of service tax (40% of 14% of tax) less 50% of ST (in case of corporates).
- b) Works Order dated 27.11.2015 was for gunniting work to be carried out for Munshi Manubarwala Memorial Chartiabale Trust for which the appellant have received 50% advance for material and mobilization, 40% running payment and 10% after completion of work with 10 days.
- c) Work Order with Dresser Rand for 2MM EPOXY Flooring, Identifier, etc with material value.
- d) Work Order by Patel Construction Company for carrying out S/R to residential building at Gopalpuri (providing Water Proofing Treatment including Replacement of Damaged Slabs)
- e) Letter of Intent dated 03.02.2015 from M/s. Claris for civil renovation work to revamp existing Claris H.Q.

From the nature of above contracts it is clear that the appellant was rendering Works Contract service.

8.1 In terms of Clause (54) of Section 65B, the term Works Contract is defined as;

*(54) "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;*

The works contract includes transfer of property in goods in the execution of such contract on which sales tax /VAT is paid. The appellant have rendered civil work/construction work alongwith material, hence would be covered under Works Contract service.



8.2 In terms of Rule 2(A) of SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006, the determination of value in the execution of a works contract shall be;

**RULE [2A. Determination of value of service portion in the execution of a works contract.** — Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely :-

(i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods [or in goods and land or undivided share of land, as the case may be] transferred in the execution of the said works contract.

**Explanation.** - For the purposes of this clause, -

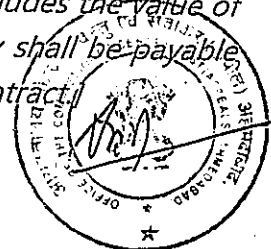
(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include, -

- (i) labour charges for execution of the works;
  - (ii) amount paid to a sub-contractor for labour and services;
  - (iii) charges for planning, designing and architect's fees;
  - (iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;
  - (v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;
  - (vi) cost of establishment of the contractor relatable to supply of labour and services;
  - (vii) other similar expenses relatable to supply of labour and services; and
  - (viii) profit earned by the service provider relatable to supply of labour and services;
- (c) where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause;
- (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;

[Provided that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on **thirty per cent**, of the total amount charged for the works contract.]





[(B) in case of works contract, not covered under sub-clause (A), including works contract entered into for, -

(i) maintenance or repair or reconditioning or restoration or servicing of any goods; or

(ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property,

service tax shall be payable on seventy per cent. of the total amount charged for the works contract.]

**Explanation 1.** - For the purposes of this rule,-

(a) "original works" means-

(i) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

(b) "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services, if any; and

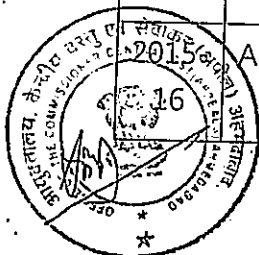
(ii) the value added tax or sales tax, if any, levied thereon :

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

8.3 On going through the Works Contract and the Invoices submitted, I find that the appellant have rendered water proofing, leveling of Floor, civil work of buildings etc which is covered under maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling as well as all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable covered under the scope of original work. Hence, I find that they are eligible for the abatement of 40% & 70% respectively as per Rule 2A discussed above.

9. The appellant has submitted a bifurcation of Works Contract Services provided to Company & Non-Company and abatement claimed under RCM. They claim that they have already discharged service tax on the Works Contract Service during the said period and have provided the breakup, which is reproduced below:-

Works Contract Service							
F.Y.	Period	Value of Service	Abatement	Taxable value after abatement	RCM liability (50%)	S.Tax rate	Total Service Tax Payable
	April to May	2859323	40%	1143729	571865	12.36%	70682



		219895	40%	87958	0	12.36%	10872
June to Sept		3917375	40%	1566950	783475	14%	109687
		822826	40%	329130	0	14%	46078
Oct		153000	40%	61200	30600	14%	4284
		0	0	0	0	0	0
Nov to March		6112692	40%	2445077	1222538	14.5%	177268
		3848972	70%	2694280	1347140	14.5%	195335
		706617	40%	282647	0	14.50%	40984
						<b>Total (A)</b>	<b>655190</b>

### Works Contract Service

F.Y.	Period	Value of Service	Abatement	Taxable value after abatement	RCM liability (50%)	S.Tax rate	Total Service Tax Payable
2016-17	April to May	505021	40%	202008	101004	14.50%	14646
	April to May	113425	70%	79396	0	14.50%	11513
	June to March	16138165	40%	6455266	3227633	15%	468007
	June to March	9144926	40%	3657970	0	15%	548696

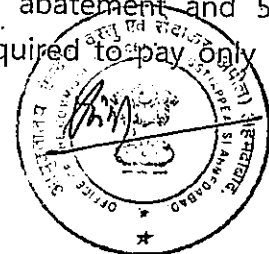
**Total B      1032841**

Total Tax payable (A+B) = Rs.10,58,999/-

Service tax Paid = Rs.5,95,501/-

**Net Service Tax payable = Rs.4,63,498/-**

9.1 Considering the fact that the service rendered by the appellant falls under Works Contract service and that the appellant have already discharged some amount of service tax under Works Contract as evident from the ST-3 Returns, and that they have self admitted their tax liability of Rs.4,63,498/- after availing the abatement and 50% exemption available under RCM. I find that the appellant is required to pay only the differential service tax of Rs.4,63,498/- alongwith interest.

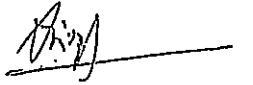


10. I find that the imposition of penalty under Section 78 is also justifiable as it provides penalty for suppressing the value of taxable services. The appellant have already paid Service tax amount of Rs.5,95,501/- and are required to discharge the remaining tax liability of Rs.4,63,498/-. I, therefore, uphold the penalty equal to Rs.4,63,498/- of the tax determined, under Section 78(1) of the Finance Act, 1994.

11. As regards the imposition of penalty under Section 77 (1) is concerned; I find that the same is also imposable. However, considering the reduction in tax liability, I reduce the penalty imposed under Section 77(1) of the Finance Act, 1994 from Rs.10,000/- to Rs.1,000/-.

12. In view of the above discussion and findings, I uphold the impugned order confirming the service tax demand to the extent of Rs.4,63,498/- alongwith interest and penalties.

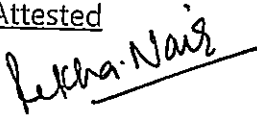
13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeal filed by the appellant stands disposed off in above terms.



(शिव प्रताप सिंह)  
आयुक्त (अपील्स)

Date: 28.07.2023

Attested



(Rekha A. Nair)  
Superintendent (Appeals)  
CGST, Ahmedabad

By RPAD/SPEED POST

To,  
M/s. Shubh Construction,  
8-Kameshwar Bunglow,  
Shayona City Road, Ghatlodia,  
Ahmedabad-380061

Appellant

The Additional Commissioner  
CGST, Ahmedabad North

Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.  
(For uploading the OIA)
4. Guard File.

