



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- टेलिफैक्स 07926305136



DIN: 20230964SW000000B4E9

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/3227/2023-APPEAL /5401

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-002-APP-93/2023-24
दिनांक Date : 28-08-2023 जारी करने की तारीख Date of Issue 05.09.2023

आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)

ग Arising out of Order-in-Original No. CGST/WT07/HG/905/2022-23 दिनांक:22.2.2023 ,
issued by The Assistant Commissioner, CGST Division-VII, Ahmedabad North

घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant
M/s. Sanidh Construction,28, Avani Bunglows,B/h Vishwakarma Mandir,
Motera,Ahmedabad - 380005

2. Respondent
The Assistant Commissioner, CGST Division-VII, Ahmedabad North,4th Floor,
Shajanand Arcade, Nr. Helmet Circle, Memnagar, Ahmedabad-380052

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, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(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 हों।

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

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनोंक 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, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद -380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd 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 Assstt. 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 अनुसूचि-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 मांग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

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



ORDER IN APPEAL

M/s. Sanidh Construction, 28, Avani Bungalows, B/h Vishwakarma Mandir, Motera, Ahmedbad- 380005 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. CGST/WT07/HG/905/2022-23 dated 22.02.2023 (in short '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-VII, Ahmedabad North Commissionerate (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable services and were holding Service Tax Registration No. AKYPM6164HSD001.

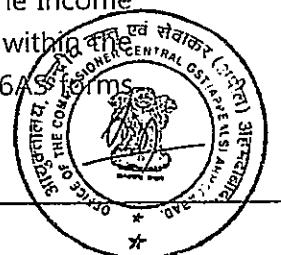
2. The facts of the case, in brief, are that based on the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2014-15, it was noticed that the appellant had declared less value under "Gross Value of Services Provided" as reflected in the ST-3 Returns compared to the income reflected under the heads "Sales / Gross Receipts from Services (Value from ITR)". The differential taxable value of Rs.12,65,247/- was noticed on which Service Tax amount arrived was to the tune of Rs.1,56,385/-.

2.1 A Show Cause Notices (SCN) bearing No. CGST/A'bad-North/Div-VII/AR-IV/TPD/UNREG 15-16/408/2020-21 dated 29.09.2020 was issued to the appellant proposing recovery of service tax amount of Rs.1,56,385/- along with interest; under Section 73(1) and Section 75 of the Finance Act, 1994. The late fee under Section 70; imposition of penalties under Section 77 and Section 78 of the Finance Act, 1994 were also proposed.

3. The said SCN was adjudicated vide the impugned order wherein the service tax demand of Rs. Rs.1,56,385/- was confirmed alongwith interest. Late fee proposed under Section 70 was dropped. However, penalty of Rs. 1000/- each under Section 77(1) & 77(2) and penalty of Rs.1,56,385/- under Section 78 of the Finance Act was imposed.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, on the grounds elaborated below:-

- SCNs have been issued without taking into consideration the following possibilities that the service provided may fall under negative list or services are exempt as per mega exemption notification no.25/2012 or that the services provided may fall under reverse charge mechanism and liable to be paid by the service receiver or that basic exemption 10 lacs is available to small service provider.
- The fact that department has issued SCN based on presumptions and third-party information is not sustainable and the same has been decided in the following judgment by the various Hon. High Courts passed in the case of Commissioner Vs Sharma Fabricators & Erectors Private Ltd (2019) & Oudh Sugar Mills Ltd V/s UOI (1978).
- Demand cannot be raised solely on the basis of figures appearing in the Income Tax Return/ Form 26AS as information of provision of service was well within the knowledge of the Revenue Authorities, as Income Tax Return/ Form 26AS forms



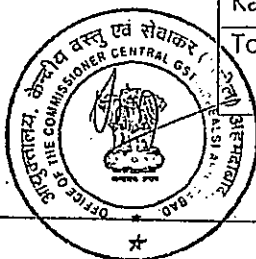
part of the Government records and therefore, alleging wilful suppression of facts by appellant cannot be sustained. They placed reliance on following:-

- CBIC Instruction dated 26.10.2021.
- R.Ramdas- 2021 (44) GSTL 258 (Mad)
- Circular No, 1053/02/2017-CX dated 10.03.2017
- Tamil Nadu Housing Board- 1995 Supp (1) SCC 50 1994.

- The burden is on the revenue to prove any of the above elements to uphold validity of an extended period of 5 years. That detailed verification must be made prior to issuing SCN and complete details be provided to the person in the SCN.
- The appellant claim that they are engaged in providing works contract services. In the F.Y. 2014-15 services were provided to following clients;

Date	Party	Amount	S.Tax.	Invoice Value	Remarks
30.05.2014	Shree Kamlam	2,34,007/-	-	2,34,007/-	S.tax not paid as falling under SSI exemption of Rs.10 Lacs
19.06.2014	Kalthia Engg. & Construction Ltd.	1,38,000/-	-	1,38,000/-	Same as above
02.01.2015	Shubh Infrastructure	34,37,382/-	4,24,860/-	38,62,242/-	S.Tax paid vide Challan dated 17.04.2015 alongwith interest of Rs. 3,771/-
Addition					
Advance received from in F.Y. 2014-15 against the invoice issued in the F.Y. 2015-16.	Shubh Infrastructure	4,68,380/-	-	4,68,380/-	S.Tax paid on such advances in the F.Y. 2015-16 by including the said value in invoice of Rs. 47,47,964/- and 2 nd invoice of Rs. 4,08,866/-+ S.Tax of Rs. 7,21,956/-
		4277769	Turnover as per 26AS	47,02,629/-	

Particulars	Amount	TDS
Taxable Value	34,37,382	
Service Tax @12.36 %	4,24,860	
Advance given to Appellant	4,68,380	
Value on TDS deducted by Shubh Infra	43,30,622	43,306
Shree Kamlam	2,34,007	2,340
Kalthia Engineering & Construction Limited	1,38,000	1,380
Total Turnover as per FORM 26AS	47,02,629	47,026



- Accordingly in Financial Year 2015-16, Shubh Traders has adjusted the excess TDS deducted on Service tax and advance received in F.Y. 2014-15 against the invoice issued in F.Y. 2015-16. As the equivalent short TDS deducted was by Shubh Infrastructure in F.Y. 2015-16, the appellant while filing the ITR for the F.Y. 2014-15 has taken the turnover of Rs. 47,02,629/- so as to match with the income reported in 26AS in spite of the actual turnover of Rs. 38,09,389/- (arrived as TDS deducted on S. tax paid in 2014-15 i.e. Rs.4,24,860/- minus TDS already deducted on advance i.e. Rs. 4,68,380/-).
- The time limit to issue SCN even with the extended period for the first half year is 25.10.2019 and for second half year is 25.04.2020, whereas the notice was issued on 29.08.2020 hence time barred.

5. Personal hearing in the matter was held on 27.06.2023. Shri Sachin Dharwal, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. He submitted that the appellant has received advance amounting to Rs.4,68,380/- from one of the customers M/s. Shubh Infrastructure, on which the client had deducted TDS and was reflected in Form 26AS. However, this advance was in respect of services rendered in the next F.Y. for which service tax applicable was paid in that relevant financial year. Therefore, this amount was wrongly included. This is also clear from the fact that another amount of Rs. 38,62,242/- on which TDS was deducted, as reflected in Form-26AS, towards service rendered, was separately shown and this included an amount of Rs. 4,24,860/- as service tax, which was paid vide Challan dated 17.04.2015 along with interest of Rs.3,771/-. He, therefore, requested to set-aside the Order-in-Original.

6. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made by the appellant in the appeal memorandum as well as those made during personal hearing. The issue to be decided in the present case is as to whether the service tax demand of Rs. 1,56,385/- alongwith interest and penalties, confirmed 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.

6.1 It is observed that the entire demand in the SCN has been raised based on the income data shared by the CBDT, on which no service tax was paid by the appellant. The appellant is registered with the department and has been filing ST-3 Returns. However, on comparing the value declared in their Financial Records vis-à-vis value declared in the ST-3 Return, following is noticed:-

F.Y.	P&L Account	ST-3	Difference	S.tax on differential income	Advance Received
2014-15	4702629	3437382	1265247	156385	468380
2015-16	Not submitted	5156830			



From the above, it is noticed that in the F.Y. 2014-15, the value as per P&L Account was Rs. 47,02,629/- whereas the value declared in the ST-3 Return was Rs. 34,37,382/-. Thus, a differential income of Rs.12,65,247/- was noticed, on which the Service Tax demand of Rs.1,56,385/- was raised.

6.2 The appellant on the other hand have contended that in the F.Y. 2014-15 till September they received Rs.2,34,007/- from Shree Kalam and Rs.1,38,000/- from Kalthia Engg & Construction Ltd. Till September, 2014, as their turnover was less than the threshold limit, they did not obtain registration. Thereafter, in January, 2015 they received Rs.38,62,242/- (Rs.34,37,382/- plus Rs.4,24,860/- (S.Tax) from Shubh Infrastructure). Thus, in all they received the total income of Rs.42,34,249/- in the F.Y. 2014-15. They claim that during said period they also received advance payment of Rs.4,68,380/-, on which TDS was deducted by the client in the F.Y. 2014-15 hence was reflected in Form-26AS of that year. Whereas the invoices for such advance payment were issued by the appellant in the subsequent F.Y. 2015-2016. Hence, the service tax payment on such advances was made in F.Y. 2015-16 (when the invoices were actually raised). A difference in taxable income noticed is due to the facts that the date of advance received and the date of invoice issued were in separate financial year.

6.3 It is observed that the appellant in the ST-3 filed for the F.Y. 2014-15 have shown the taxable value as Rs. 34,37,382/- whereas the income reflected in their P&L Account was Rs. 47,02,629/- thus a differential income of Rs.12,65,247/- is noticed. The appellant are claiming that in the ITR, the value of Rs. 47,02,629/- includes the receipts Rs.2,34,007/- + Rs.1,38,000/- (which pertains to receipts for the period prior to registration) plus Rs.4,24,860/- (which is service tax amount on which TDS was wrongly reflected by Shubh Infrastructure) and also the advance payment of Rs. 4,68,380/-.

Sr.No.	Amount	Remarks
01	2,34,007	Receipts from Shree Kalam
02	1,38,000	Receipts from Kalthia Engineer
03	4,24,860	S.Tax included while deducting TDS
04	4,68,380	Advance received from Shubh Infrastructure
Total	12,65,247	Differential Income Noticed in ST-3

6.4 I have gone through the Balance Sheet of Shubh Infrastructure, where in the amount of Rs.4,68,380/- is shown credit in the F.Y. 2014-15 in the ledger of the appellant. I find that the amount of Rs. 4,68,380/- received as advance and the justification of non-payment of tax on such advance, given by the appellant is not tenable. Further, it is noticed that the appellant in the ST-3 Return filed for the F.Y. 2014-15 at column (BI.2:- Amount received in advance for service for which bills/invoices/challans have not issued) have not mentioned the advance amount of Rs.4,68,380/- claimed to have been received from M/s. Shubh Infrastructure. They provided the ST-3 Return filed for the F.Y. 2015-16 as documentary evidences to substantiate their claim that service tax on the amount received as advance was discharged in the subsequent year. I have gone through the ST-3 Return filed for the F.Y. 2015-16

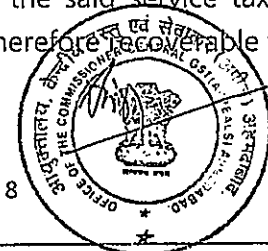


6.4 I find that the service tax liability arises even on advances received. If part of the payment is received in advance and the remaining part is received after issuance of invoice, then the point of taxation for the first payment received in advance shall be the date on which such payment is received. In terms of Section 67(3) of the Finance Act, 1994, the gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service. Further, in terms of Explanation to Rule 3 of the (POTR) Point of Taxation Rules, 2011, wherever any advance by whatever name known, is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance. The appellant in the instant case received the advance in the F.Y. 2014-15. I, therefore, find that the tax liability on such advance shall accrue from the receipt of such advances. However, since the appellant claim to have made the service tax payment on such advances in the subsequent year, I find they are not required to pay service tax again as the same was discharged by the appellant in F.Y. 2015-16. I, therefore, find that the amount of tax paid in subsequent F.Y. needs to be appropriated against the present tax liability and the appellant is only liable to pay the interest on delayed payment of service tax amount of Rs. 4,68,380/-.

7. Further, the appellant have strongly contended that the notice is time barred, as the time limit to issue SCN by invoking extended period for the 1st Half Year is 25.10.2019 and for 2nd Half Year is 25.04.2020, whereas the notice was issued on 29.08.2020. The appellant have not submitted the ST-3 returns filed for April, 2014 to September, 2014. The ST-3 for 1st H.Y. was required to be filed on 25th October, 2014 which was extended to 14th 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 1st H.Y should have been issued latest by 13th November, 2019. Whereas, the present notice was issued on 29.08.2020, hence, I find that the demand for this period is hit by limitation, hence time bar.

7.1 It is observed that the ST-3 return for (October, 2014 to March, 2015) was filed on 21.04.2015. Considering five year period from the actual date of return filing, the due date to issue the demand notice shall be 20.04.2020. However, due to COVID pandemic, in terms of relaxation provision of Section 6 of Chapter V of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (No.2 of 2020) dated 31.03.2020, and the CBIC Notification G.S.R. No. 418(E), dated 27-6-2020, the Central Government had extended the time limit in the taxation and other laws. In terms of said Ordinance, where the time limit specified in an Act falls during the period from 20th March, 2020 to 29th September, 2020, the same shall stand extended to 31st March, 2021. Considering, the relaxation provided vide above Ordinance in the time limit for issuance of SCN, I find that the notice covering the period from October, 2014 to March, 2015 was required to be issued latest by 30th March, 2021. As the present notice was issued on 29.08.2020, I find that the demand for second half year shall sustain on limitation.

8. As the service tax liability on Rs. 4,68,380/- has been discharged by the appellant, they are required to pay only interest on the said service tax amount as there is no escape from interest liability. The same is therefore recoverable with applicable rate.




9. I find that the imposition of penalty under Section 78 is not justifiable as it provides penalty for suppressing the value of taxable services. I find that the appellant has paid the service tax subsequently and reflected the same in the ST-3 Returns filed for the F.Y. 2015-16 hence suppression cannot be alleged. I, therefore, find that the penalty imposed under Section 78 is also legally not sustainable.

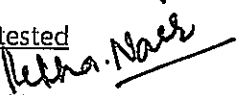
10. As regards the imposition of penalty under Section 77(1), I find that the same is not impossible as the appellant has discharged the tax liability in the subsequent financial year. Further, penalty under Section 77(2) is impossible as they filed incorrect ST-3 Return. I, therefore, uphold the penalty of Rs.1,000/- imposed under Section 77(2) of the Finance Act, 1994.

11. In view of the above discussion, I uphold only the interest liability on the service tax demand of Rs.4,68,380/- pertaining to the period October, 2014 to March, 2015 alongwith penalty of Rs.1,000/- under Section 77(2).

12. 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 (अपील)

Date: 28.08.2023

Attested

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

By RPAD/SPEED POST

To,
M/s. Sanidh Construction,
28, Avani Bungalows,
B/h Vishwakarma Mandir, Motera,
Ahmedabad- 380005

Appellant

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

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.

