



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

By SPEED POST

DIN:- 20231164SW0000888FF5

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/4668/2023-APPEAL / 8272
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-002-APP-129/2023-24 and 30.10.2023
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील्स) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	17.11.2023
(ङ)	Arising out of Order-In-Original No. 12/AC/Dem/NA/2023-24 dated 17.07.2023 passed by the Assistant Commissioner, CGST Division-V, Ahmedabad North Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s. Maruti Construction Co., 2 -Adinath Complex, Nr. Kailkund Char. Rasta, Mafipur, Dholka, Ahmedabad-387810

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

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

भारत सरकार का पुनरीक्षण आवेदन:-

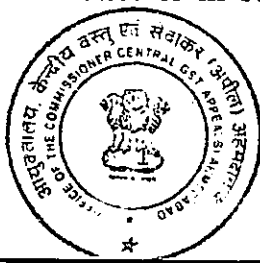
Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में 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 :-

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 :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

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



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

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

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

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

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

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

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित 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 मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

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

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

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

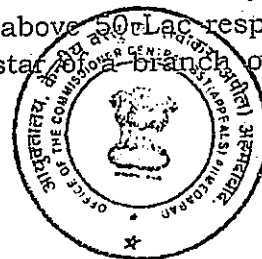
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-  
Under Section 35B/ 35E of CEA, 1944 an appeal lies to:-

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

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 above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. 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 Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs. 100/- for each.

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

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

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

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

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

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

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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.

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

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



ORDER IN APPEAL

M/s. Maruti Construction Co., 2-Adinath Complex, Nr. Kalikund Char Rasta, Maflipur, Dholka-387810 (hereinafter referred to as 'the appellant') have filed the present appeal against the Order-in-Original No. 12/AC/Dem/NA/2023-24 dated 17.07.2023, (in short 'impugned order') passed by the Assistant Commissioner, Central GST, Division-V, Ahmedabad North (hereinafter referred to as 'the adjudicating authority').

2. The appellant are registered under 'Work Contract Services' as service provider and under "GTA Service" as service recipient. With effect from 01.07.2012, they were engaged in rendering taxable services as defined under Section 65B(44) which are not falling under Negative list of services as defined under Section 66D of the Finance Act, 2012. The appellant were holding Service Tax Registration No. AAPFM663GSD001.

2.1 The facts of the case, in brief, are that based on the CERA Audit Inspection report, an inquiry was initiated by the department against the appellant. On scrutiny of financial records and the documents provided by the appellant, it was noticed that the appellant were engaged in construction of road, compound wall work etc, covered under Work Contract Service and were also incurring transport expenses. However, during the F.Y. 2011-12 to F.Y. 2014-15, they had not discharged their service tax liability on works contract service rendered and on GTA service, as recipient of service. Since they were not registered with the department, service tax registration was taken after initiation of the investigation i.e. on 29.06.2015.

2.2 A Show Cause Notice (SCN) No.SD-04/SCN-17/Maruti/2016-17 dated 06.10.2016 was, therefore, issued proposing service tax demand of Rs.20,60,898/- under Works Contract Service and demand of Rs.6,18,808/- under GTA service, u/s 73(1) of the F.A.,1994 alongwith interest u/s 75. Penalties u/s 77(1)(a) for failure to obtain registration, penalty u/s 77(1)(c)(ii) for failure to produce documents called by Superintendent, Service Tax; Penalty u/s 77(1)(c)(iii) for failure to honour the summons; penalty u/s 77(2) for non-filing of returns and failure to self assess the taxable value and tax liability and Penalty u/s 78 for non-payment of service tax were also proposed.

2.3 The said SCN was adjudicated vide the O-I-O No. SD-04/29/AC/2016-17 dated 27.03.2017, wherein the service tax demand alongwith interest was confirmed. Penalties proposed in the SCN were also imposed. Aggrieved by the said O-I-O, the appellant went in appeal and the Commissioner (Appeal), Central GST, Ahmedabad vide OIA No.AHM-EXCUS-002-APP-235-17-18 dated 22.12.2017, remanded the matter to the adjudicating authority to examine the case afresh and pass a speaking order.

2.4 In the remand proceedings, the adjudicating authority vide Order-in-Original No. 11/AC/Dem/2021-2022 dated 30.07.2021 confirmed the recovery of service tax demand of Rs.20,60,898/- under Works Contract Service and Rs.6,18,808/- under GTA service alongwith interest. He also imposed penalty of Rs.10,000/- u/s 77 and penalty of Rs.26,79,706/- u/s 78 of the F.A, 1994.

2.5 In the appeal against the said O-I-O, the then Commissioner (Appeals) vide O A No. AIM-EXCUS-002-APP-38/2022-23 dated 23.9.2022 considered the violation of the

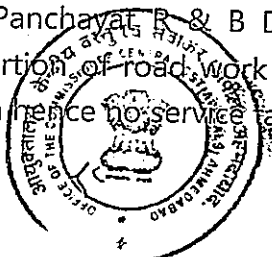


principles of natural justice as well as the merits of the case and remand back the demand of Rs.20,60,898/- to the Assistant Commissioner, CGST, Division-V, Ahmedabad North to re-examine firstly why the benefit of exemption granted under Notification No.25/2012-ST dated 20.06.2012, was not available to the appellant and to consider cum tax benefit to the appellant while deciding the actual tax liability; secondly whether the appellant is eligible for exemption for trading activity as claimed by them and to decide the tax liability accordingly.

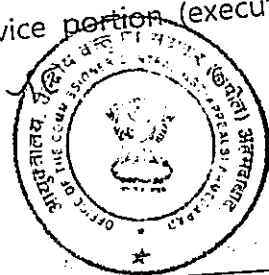
3. The adjudicating authority vide impugned order confirmed the service tax demand of Rs.20,60,898/- under 'Works Contract Service' alongwith interest. Penalty of Rs.10,000/- under Section 77 and penalty of Rs.20,60,898/- under Section 78 of the F.A., 1994 were also imposed.

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

- The Adjudicating Authority has transgressed beyond the order of remand issued by the Commissioner Appeals OIA dated 22.12.2017 issued on 05.01.2018. Vide para 6 of page no. 7 of the Order in Appeal, the Commissioner (Appeals) has pronounced that Sub-contracted activity for the government work done in relation to the road work is exempted from the payment of tax. Further, the appellate authority held that no service tax liability arises in other cases. Thus total value of Works Contract services amounting to Rs. 49,16,183/- is exempted from the payment of service tax. Further, vide para 12 of OIA, the appellate authority has declared that the appellant is engaged in trading of goods as is evident from work order produced of M/s Akshar Arcade. Accordingly, goods supplied to M/s Akshar Arcade falls under the negative list entry i.e. 66D (e) and are exempted from the payment of service tax. In view of the same, Rs.22,81,543/- is exempted from the service tax. Without considering the above, the adjudicating authority has passed the order afresh which is not sustainable in law as the authority cannot go beyond the appellate authority. As mentioned in Para 6 of the OIA, it is proved that the above is also examined by the Commissioner (Appeals) and accordingly held by him that since the activity carried out by the appellant falls under the above entry i.e. 13(a) and the said activity is exempted from the payment of Service Tax. Therefore, the appellant is not required to pay service tax on the said activity.
- That the Construction of road work for use of transportation by public is not liable to Service Tax. The appellant has provided services of construction of road work for use of transportation by public. Sr. No. 13 of the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 which exempts the services *provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, (a) a road, bridge, tunnel, or terminal for road transportation for use by general public.* In case of the appellant, M/s Natraj Contruction Co. (Government registered contractor Class AA) was entrusted road work by Panchayat B & B Division, Ahmedabad. The appellant was entrusted certain portion of road work as a sub contractor. This case squarely falls under exemption hence no service tax liability arises.



- That the work of Sub-Contracted Road work for use of transportation by public is exempted as per entry Sr. No. 29(h) under the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012. As per entry Sr. No. 29 (h) of Mega Exemption Notification No. 25/2012-Service Tax dated 20.06.2012, sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt. The appellant was entrusted certain portion of road work as a sub-contractor, hence this case squarely falls under the above exemption notification. As there is no liability of Service Tax on main contractor, sub-contractor is also not liable to pay Service Tax. Similarly, no Service Tax liability arises in other case. Reliance placed on decision passed in the case of M/s. Shree Ganesh Traders TMI 749 - CESTAT New Delhi
- That the Trading of goods is not a service under the Finance Act, 1994. The appellant is supplying materials to the customers and charging VAT thereon. They have supplied material to Akshar Arcade as is evident from the Work Order dated 05.03.2013.
- That the work of compound wall and drainage executed for individual bungalow is exempted from the Service Tax Levy. They also provided services of construction of compound wall and drainage work for individual bungalows which are exempted vide Sr. No. 14(b) of the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012.
- Notwithstanding the above, the authorities have erred in not appreciating the fact that the entire transaction is revenue neutral. If service tax is held to be payable then the same would then have been claimed as CENVAT Credit.
- The appellant is eligible to pay service tax on receipt basis. The appellant is partnership firm and small service provider who is providing taxable services less than 50 lakhs in a year. The adjudicating authority has treated the gross amount billed by the appellant as the value of taxable service, without making any adjustments. Hence, the manner of computation of tax adopted by the adjudicating authority is in-correct and benefit of receipt basis must be provided to the appellant.
- Notwithstanding the above, the appellant is eligible for ad-hoc exemption Notification no. 33/2012 - Service Tax which exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act.
- In case of works contract service if held taxable then only 40% of the gross receipts is taxable. The appellant during the disputed period was engaged in the activities Construction of road work for public, Construction of boundary wall for bungalow, Pipeline work for bungalow. The above activities carried out by the appellant include both material portions (cost of material) during execution of the contract and the service portion (execution of construction). Thus the activity



carried out by the appellant clearly falls under the definition of works contract as per Section 65 (I 05) (zzzza), or as the case may be Section 65B (54).

- If the appellant is required to pay tax then cum tax benefit must be provided
- That SCN fails to substantiate the intention to evade payment of tax, so extended period cannot be invoked. Further, the SCN also fails to prove the allegation of suppression of facts or malafide intention hence extended period cannot be invoked under proviso to Section 73(1).
- Interest is also not payable u/s 75 of the Finance Act, 1994 when the appellant is not liable to pay any service tax.
- That Penalty under Section 77 is not imposable in the present case as the appellant did not obtain the service tax registration as they were not liable to pay service tax and accordingly were not liable to be registered.
- That Penalty under Section 78 is not imposable as the appellant was under a genuine and bona fide belief that they were not liable to pay service tax on the services rendered by them under "Works Contract Service" and on the services received by them under "GTA Service", based on the detailed submissions made above. Therefore there was reasonable cause for the appellant for not paying service tax.

5. Personal hearing in the matter was held on 28.08.2023. Shri Bishan R. Shah, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in appeal memorandum. He submitted that the adjudicating authority has considered the value of Rs.1,33,47,183/- instead of Rs.1,29,35,953/- as per Profit & Loss account for the year 2014-15; that this is his third round of appeal in the same matter. In the first instance, the appellant authority had confirmed that tax is not leviable in respect of construction of road and some other issues and had remanded the matter in respect of certain other issues. However, the adjudicating authority treated the same as the fresh proceedings and confirmed the entire demand. Again he had filed another appeal wherein the matter was again remanded back. In the second round of adjudication the authority has again confirmed the entire amount including the services which were held as exempted such as construction of road work and sale of goods which were involving sale. He submitted that the road work by the appellant as contractor to sub-contractor is exempted under Sr. No. 13A of the Notification no.25/2012-ST. Construction of compound wall and drainage work for individual Bunglow is also exempted under Sr. No. 14B of the same notification. Sale of goods and supply of material falls under the negative list which is outside the purview of service definition. He further submitted that the adjudicating authority has not allowed abatement for the original works undertaken by the appellant. If the applicable abatement is allowed the taxable value is less than Rs.10,00,00/- and hence eligible for threshold exemption. He therefore requested to set-aside the impugned order.

5.1 Subsequently due to change in the appellate authority, another date (25.10.2023) for personal hearing was conveyed to the appellant. However, nobody appeared on



behalf of the appellant. Hence, I proceed to decide the case on the basis of the oral and written submissions made by them in earlier hearing.

6. I have carefully gone through the case records, the impugned order, written submissions made in the appeal memorandum, as well as the submissions made during personal hearing by the appellant and also the OIA No.AHM-EXCUS-002-APP-38/2022-23 dated 23.09.2022 passed by the Commissioner(Appeal), Central GST, Ahmedabad. The issue to be decided in the present appeal is as to whether the impugned order passed by the adjudicating authority was in consonance with the directions issued by the Commissioner(A) vide OIA No.AHM-EXCUS-002-APP-38/2022-23 dated 23.09.2022 ?

The demand pertains to the period F.Y. 2011-12 to F.Y. 2014-15.

6.1 It is observed that only dispute in the present appeal is regarding the service tax demand of Rs.20,60,898/- confirmed under 'Works Contract Service' alongwith interest and penalties.

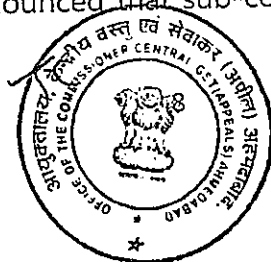
F.Y.	Gros Income	Abatement @30%	Net taxable Value	Service Tax payable
2012-13 (w.e.f 01.7.2012)	4975393	1492618	3482775	430471
2013-14	13347183	4004155	9343028	1154798
2014-15	5497335	1649201	3848134	475629
TOTAL	23819911		16673937	2060898

6.2 The adjudicating authority was required to re-consider on two issues:-

- Whether the demand under Works Contract Service would classify under 'Original Works' as claimed by the appellant and whether the benefit of exemption granted under Notification No.25/2012-ST dated 20.06.2012, was available to them?
- Whether the appellant is engaged in trading of goods as claimed by them and if so, then the value of such goods needs to be deducted and only service element shall be taxed?

6.3 On the first issue, the adjudicating authority held that the appellant has not provided relevant documents to establish their claim that the works contract service rendered by them falls under 'original works' hence eligible for exemption. On the second issue the adjudicating authority made the observation that the appellant has not provided the documents to establish their claim that the goods supplied to M/s. Akshar Arcade falls under negative list.

6.4 The appellant on the other hand have contended that the adjudicating authority has transgressed beyond the order of remand order issued by the then Commissioner (Appeals) vide O-I-A dated 22.12.2017 as the appellate authority at page-6 & 7 of the said Order-in-Appeal, has pronounced that sub-contracted activity for the government





work done in relation to the road work is exempted from the payment of tax. The appellate authority held that no service tax liability arises in other cases. Thus total value of Works Contract services amounting to Rs. 49,16,183/- is exempted from the payment of service tax. Further, vide para-12 of OIA, the appellate authority declared that the appellant is engaged in trading of goods as is evident from work order of M/s Akshar Arcade. Accordingly, goods supplied to M/s Akshar Arcade falls under the negative list entry i.e. 66D(e) and is exempted from the payment of service tax. In view of the same, Rs.22,81,543/- is exempted from the service tax. Further they claimed that the construction of road work carried out for M/s. Natraj Construction was exempted. M/s Natraj Construction Co. (Government registered contractor Class AA) was entrusted road work by Panchayat R & B Division, Ahmedabad. They claim they were entrusted certain portion of road work as a sub contractor. As the service was rendered by them to the main-contractor for construction of road which was used for transportation by public and is exempted in terms of Sr. No. 13 of the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012. Therefore the work of sub-contractor is also exempted as per entry Sr. No. 29(h) under the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012.

6.5 I have gone through the OIA dated 22.12.2017. The then Commissioner (A) at para-6 of the order has held that the appellant was entrusted certain portion of road work as a sub-contractor by M/s. Natraj Construction Co. hence exempted. But whether the said service falls under original work needs to be examined. In the OIA dated 23.9.2022, also it was held that the directions of the Commissioner (A) issued vide Order dated 22.12.2017 was not examined.

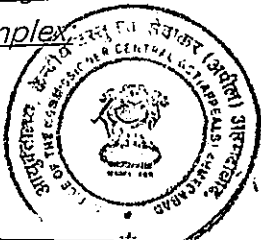
6.6 The appellant are claiming exemption provided under Sr.no.13 & 14 of Notification No.25/2012-ST dated 20.06.2012. Relevant text of said notification is reproduced below:-

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

- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public;
- (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;
- (c) a building owned by an entity registered under section 12AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;
- (d) a pollution control or effluent treatment plant, except located as a part of a factory; or a structure meant for funeral, burial or cremation of deceased;

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

- (a) an airport, port or railways, including monorail or metro;
- (b) a single residential unit otherwise than as a part of a residential complex;



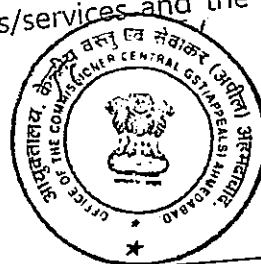
- (c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
- (d) post-harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or
- (e) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;

6.7 It is observed that the original adjudicating authority at para 16.1 of the OIO dated 27.03.2017 had listed the nature of construction work carried out by the appellant, wherein, the work carried out for the main contractor M/s Natraj Construction Co. was classified as government work. As the work was entrusted by Panchayat R & B, Division, Ahmedabad, I find that the same are exempted in terms of Sr. No. 13(a) of said notification. Moreover, sub-contractor providing services by way of works contract to another contractor, if exempted, then in terms of Sr.no. 29 of said notification, the sub-contractor providing the same service shall also be eligible for the exemption. The adjudicating authority in the impugned order while deciding the remand matter ignored these facts. I find that the construction of road carried out for M/s Natraj Construction Co. by the appellant is exempted. The value of such services comes to Rs.26,60,786/- (Rs.14,61,522 plus Rs. 11,99,264/- as per the bifurcation given by the appellant), which, I find needs to be deducted from the gross value of Rs. 2,38,19,911/-.

6.8 Further, vide para-12 of OIA dated 22.12.2017, the appellate authority had declared that the appellant is engaged in trading of goods as is evident from work order of M/s Akshar Arcade. He held that the goods supplied to M/s Akshar Arcade falls under the negative list entry i.e. 66D (e) and is exempted from the payment of service tax. Hence, the tax liability should have been fixed only on the service element and not on the gross amount billed. However, the adjudicating authority denied the benefit for non-production of documents. Once it is established by the Commissioner(A) in his earlier Order dated 22.12.2017, that the appellant has supplied the material hence the value of material supplied also needs to be deducted from the taxable value, which comes to Rs.1,05,450/-.

7. As regards the Construction of compound wall and drainage work for individual Bungalow, the appellant claim they are exempted vide Sr. No. 14(b) of the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012. However, the appellate authority vide OIA dated 22.12.2017 held that the same was executed for a project of a developer hence taxable but the appellant shall be eligible for the benefit of cum tax benefit which needs to be verified by the adjudicating authority. As the issue was already settled the only dispute before the adjudicating authority was to grant the cum tax benefit which was not granted.

7.1 It is observed that Hon'ble Tribunal in the case of *Commissioner v. Advantage Media Consultant [2008 (10) S.T.R. 449 (Tri.-Kol.)]* held that service tax being an indirect tax, was borne by consumer of goods/services and the same was collected by



assessee and remitted to government and total receipts for rendering services should be treated as inclusive of Service tax due to be paid by ultimate customer unless Service tax was paid separately by customer. The Tribunal had noted that cum-tax value has been incorporated in Section 67 of Finance Act, 1994 vide amendments made subsequently. This decision has been maintained by the Apex Court as reported in **2009 (14) S.T.R. J49 (S.C.)**. Further, the issue was also settled by the Apex Court in the case of *Maruti Udyog Ltd. - 2002 (141) E.L.T. 3 (S.C.)* wherein it was held that the sale price which is charged is deemed to be the value for the purpose of levy of excise duty, but the element of excise duty, sales tax or other taxes which are included in the wholesale price are to be excluded in arriving at the assessable value. I, therefore, find that this benefit is required to be extended to the appellant and service tax demand needs to be re-worked accordingly.

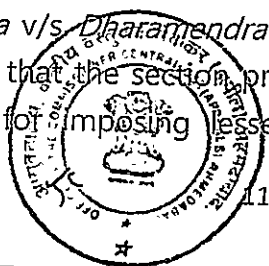
**7.2** Further, the appellant have claimed that if applicable abatement is allowed the taxable value shall be less than Rs.10,00,00/- and they shall be eligible for threshold limit exemption. I find that the exemption extended under Notification No.33/2012-ST dated 20.06.2012 provides exemption to the taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under Section 66B of the said Finance Act. The above exemption is provided on the aggregate value and not on the abated value as claimed by the appellant. I find that the aggregate value of taxable services rendered by the appellant is above the threshold limit after deducting the exempted values. Hence, the appellant shall not be eligible for exemption and therefore shall be required to pay service tax on such value.

**7.3** Thus, in view of the above findings, I find that the tax liability of the appellant after considering the exemption and cum tax benefit shall be **Rs. 7,46,131/-**. The calculation is given below:

F.Y.	Gross Income	Exempted Values	Gross Taxable Value	Net taxable Value after abatement	Taxable value after cum tax benefit (G.V*100/11 2.36)	S.Tax Payable
2012-13 (w.e.f 01.7.2012)	4975393	1566972 (1461522+105450)	3408421	1022526	1001049	123730
2013-14	13347183	1199264	12147919	3644376	3567830	440984
2014-15	5497335	5497335	5497335	1649201	1467783	181418
	<b>23819911</b>	<b>8263571</b>	<b>21053675</b>	<b>6316103</b>	<b>6036661</b>	<b>746131</b>

**8.** When the demand sustains there is no escape from interest, the same is therefore recoverable with applicable rate of interest on the tax held sustainable in the para supra.

**9.** I find that the imposition of penalty under Section 78 is also justifiable as it provides penalty for suppressing the value of taxable services. Hon'ble Supreme Court in case of *Union of India v/s Dharamendra Textile Processors* reported in **[2008 (231) E.L.T. 3 (S.C.)]**, concluded that the section provides for a mandatory penalty and leaves no scope of discretion for imposing lesser penalty. I find that the appellant was



rendering a taxable service but were not registered with the department. They took service tax registration on 29.06.2015 after initiation of the investigation. This act thereby led to suppression of the value of taxable service and such non-payment of service tax undoubtedly brings out the willful mis-statement and fraud with intent to evade payment of service tax. If any of the circumstances referred to in Section 73(1) are established, the person liable to pay tax would also be liable to pay a penalty equal to the tax so determined above.

10. As regards, the imposition of penalty under Section 77 (1) is concerned; I find that the same is also imposable. The appellant were rendering the taxable service and were liable to pay service tax, however, they failed to obtain registration and thereby failed to file ST-3 Return. I, therefore, find that all such acts make them liable to a penalty. 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.5,000/-.

11. In view of the above discussion, I partially uphold the impugned order confirming the service tax demand of Rs. 7,46,131/- alongwith interest and penalties.

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.

*G.C.J.*  
30-10-23  
(ज्ञानचंद जैन)  
आयुक्त (अपील्स)

Date: 30.10.2023

Attested

*रेखा*

(रेखा नायर)

अधीक्षक(अपील्स)

सी. जी. एस. टी, अहमदाबाद

By RPAD/SPEED POST

To,  
M/s. Maruti Construction Co.,  
2-Adinath Complex,  
Nr. Kalikund Char Rasta, Mafliapur,  
Dholka-387810

Appellant

The Assistant Commissioner  
CGST, Division-V,  
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.

