



सत्यमेव जयते

आयुक्त का कार्यालय

Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाडी, अहमदाबाद-380015

GST Bhavan, Ambawadi, Ahmedabad-380015

Phone: 079-26305065 - Fax: 079-26305136

E-Mail : [commrappl1-cexamd@nic.in](mailto:commrappl1-cexamd@nic.in)

Website : [www.cgstappealahmedabad.gov.in](http://www.cgstappealahmedabad.gov.in)



आज़ादी का  
अमृत महोत्सव

**By SPEED POST**

DIN:- 20240264SW0000121397

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/3853/2023 / 15/16
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-203/23-24 and 29.01.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	05.02.2024
(ङ)	Arising out of Order-In-Original No. 498/AC/DEMAND/22-23 dated 2.2.2023 passed by The Assistant Commissioner, CGST Division-I, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Atulkumar Kantilal Shah 408, Pavan Apartment Satnam Way Bridge, Naroda Ahmedabad - 382330

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:**

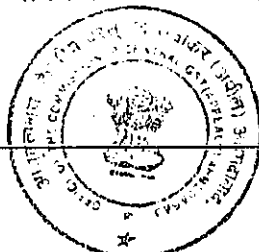
(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

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 प्रकिया 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 रिवेट 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 हो।

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 भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

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

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

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

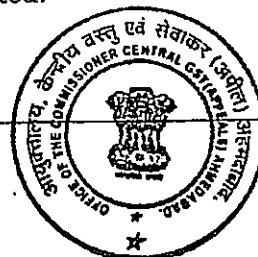
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

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

(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 संपोषित 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 और 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपील 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।

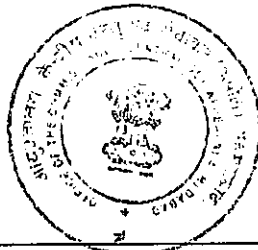
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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.

(6) (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**

The present appeal has been filed by M/s. Atulkumar Kantilal Shah, 408, Pavan Apartment, Satnam Way Bridge, Naroda, Ahmedabad - 382330 (hereinafter referred to as "the appellant") against Order-in-Original No. 498/C/Demand/22-23 dated 02.02.2023 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division I, Ahmedabad North (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant is engaged in the business activity of service provider holding PAN No. AGAPS1017M. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2016-17, it was noticed that the appellant neither obtained STC No nor paid any service tax whereas figures are shown as "Total Amount Paid/Credited under 194C, 194H, 194I, 194J" and "Sales of Services" in their ITR filed with the Income Tax department as under:

Year	Total sale of service	Service tax @15%
2016-17	31,44,616/-	4,71,692/-

Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but has not paid the applicable service tax thereon. The appellant were called upon to submit copies of Balance Sheet, Profit & Loss Account, Income Tax Return, Form 26AS, for the said period. However, the appellant had not responded to the letter issued by the department.

2.1 Subsequently, the appellant were issued a Show Cause Notice No. CGST-Div-I/Unregistered TPV/SCN No 1218/2016-17 dated 18.10.2021 demanding Service Tax amounting to Rs. 4,71,692/- for the period FY 2016-17, under provisions of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1), Section 77(2) and Section 78 of the Finance Act, 1994 and Late Fee under section 70(1) of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 4,09,300/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period FY 2016-17. Further, (i) Penalty of Rs. 4,09,300/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(a); & (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1)(c) of the Finance Act, 1994;



and (iii) Late fee of Rs. 20,000/- for each return of the concerned period, was imposed on the appellant under Section 70(1) of the Finance Act, 1994.

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

- The appellant submitted that they Appellant are a small service provider engaged in providing works contract services for repairing of housing of Gujarat State Police Awas Nigam Limited/ Gujarat State Housing Corporation Limited as a subcontractor. They have also provided services of laying pipeline for drainage for staff quarters for staff quarters of GSRTC which is a Governmental authority. As they have provided works contract services to the Government/ Governmental authority for non-commercial use they are not liable to service tax. They have furnished copy of work order dated 13-06-2016 issued by Chief irrigation engineer evidencing work allotted for providing and laying of drainage line connection for industrial staff quarters of Nadiad Division. Considering the same the adjudicating authority has dropped the demand on services of providing and laying drainage pipeline for industrial staff quarters at Nadiad Division.

The adjudicating authority didn't considered the services provided to GSRTC as exempt from service tax as per notification No. 25/2012-ST dated 20-06-2012. The adjudicating authority has also not considered the fact the total tax has been paid by the main contractor on services provided to Gujarat Police Avas Nigam Limited. They submitted that the impugned order is passed without appreciating the fact the services are provided to the Government/ Governmental authority for non-commercial purposes and further the main contractor has paid the tax on total value of services and in this situation , sub-contractor is not again required to pay service tax as the same would result into double taxation. They placed reliance on BCC Developers and Promoters Pvt. Ltd. V.Commissioner of Central Excise, Jaipur, reported in [2017 (52) S.T.R. 22 (Tri. - Del.)] wherein it has been held that where service tax has been paid by the main contractor, service tax is not demandable again from sub-contractor as it would amount to double taxation.

Further, they submitted that the payment made by the main contractor has not been disputed by Revenue and in these circumstances, the same shall be treated as payment made by the appellant.

In the matter of Power Mech Projects Ltd. v. Commissioner of Customs, Guntur, reported in [2017 (48) S.T.R. 165 (Tri. - Hyd.)] it has been held that service tax demand from sub-contractor is not sustainable where main contractor has paid the tax on the total value of services. They have furnished the copies of the challans paid by the main contractor and contract copy before the adjudicating authority.



- Further Appellant also placed reliance on the following CBIC Circulars supporting their claim that sub-contractor is not liable to pay tax when main-contractor has paid tax on gross amount:

- Circular F.No.341/43/96-TRU dated 31-10-1996

Circular F.No. B/43/4/97/TRU, dated 2-7-1997

> Circular F. No.B-43/1/97-TRU dated 6-06-1997

Circular F.No.B-11/3/1998-TRU dated 7-10-1998

- Circular F.NO. B2/8/2004-TRU Dtd. 10-09-2004

- The Appellant also made reference of the Trade Notice No.7/97-ST, dated 04-07-1997 of Mumbai Commissionerate-I, which reads as follows:

*"2.4 The services should be rendered to a client directly, and not in the capacity of a sub-consultant/associate consultant to another consulting engineer, who is the prime consultant. In case services are rendered to the prime consultant, the levy of the service tax does not fall on the sub-consultant but it falls on the prime or main consulting engineer who raises a bill on his client (which includes the charge for services rendered by the sub-consultant)."*

- The Appellant also relied on a letter issued by the Directorate General of Service Tax (F.No. V/DGST/Misc-7/98/Mumbai dated 11-02-1999) wherein it has been clarified that this principle of sub-contracting would be applicable for all service categories. This letter is based on the Ministry of Finance letter (F.No. 11/3/98-TRU dated 7-10-1998), wherein the issue of payment of service tax by a sub-contractor has been considered. Both the two conditions as service tax having been paid by the principal and the subcontracting being in respect of same service category which were mentioned therein have been satisfied in this case. Relevant extract of said letter is reproduced hereunder :

*"No Service Tax on sub-contracted services and reimbursements-Clarification-*

*During the Core Group meeting held on 2nd February, 1999, it was brought to the notice by numerous assesses that different practices are being followed by the field formations with regard to interpretation of the Service tax provisions. The points brought to the notice are enumerated as under:*

- (i) *field formations are allowing the benefit of Sub-contracting only in those service categories, where it have been specifically provided in the Ministry's instructions. In other service categories, the benefit of the same is not being given. The Para 7.2 of the Ministry's instruction issued vide F.No.B. 11/3/98-TRU dated 7-10-1998 specifically deals with the issue. The Para reads as follows -*

*"A question has been raised as to whether service tax is payable by a market research agency in case an advertising agency commissions a market research for or on behalf of a client of the advertising agency as it would result in double or multiple taxation (as the advertising*



agency is also liable for paying service tax on services rendered by him to his client). It is clarified that in the instant case a market research agency would be required to pay service tax on services rendered by it to an advertising agency and the advertising agency is also liable to pay service tax on the amount billed to its client for advertising services. As stated earlier in Para 5.6 service tax is not required to be paid by a sub-contractor only in cases where service tax has been paid by the principal for services rendered by him to his client and provided further that the sub contracting in question is in respect of the same service category".

The issue is very clear in the light of above clarification by the Ministry and the practice being followed in the field formations is not in accordance with the above clarification. Therefore, it is clarified the above clarification in Para 7.2 of the Ministry's instruction would be applicable of all service category.

- The Appellant also placed reliance on the recent decision of Urvi Construction Vs. CST, Ahmedabad reported in [2010 (17) STR 302 (Tri.- Ahmd.)] wherein Hon'ble Ahmedabad Tribunal has held that If the sub-contractor is required to pay the service tax it would amount to taxing the same service twice.
- The Appellant also relied upon the decision of Hon'ble Tribunal in the case of BBR India (Ltd.) vs. Commissioner of Central Excise, Bangalore-II, reported in [2006 (4) STR-269 (Tri.- Bangalore)], has held that –

"liability to pay service tax to the Government is on the prime consultant and not on the sub-consultant, who is the Appellant and the Appellant is not liable to pay service tax demanded."

- Further they also placed reliance on the decision in the case of:
  - (ii) CCE Indore vs. Shivhare Roadlines reported in [2009-TIOL-526-CESTAT-Del]=[2009](16) STR 335(tri-Del);
  - (iii) Shiva Indus. Security Agency (Guj.) P. Ltd. Vs. CCE Surat (2009 (13) STR 699 (Tri.- Ahm.)) -Stay order;
  - (iv) Evergreen Suppliers Vs. CCE, Mangalore- [2008 (9) S. T.R.467 (Tri-Bang.)]
  - (v) Foto Flash Vs. CCE, Bangalore - [2008 (9) S.T.R. 462 (Tri-Bang.);
  - (vi) Synergy Audio Visual Workshop Pvt. Ltd. Vs. Commr. Of S.T., Bangalore- [2008 (10) S.T.R. 578 (Tri-Bang.)]
  - (vii) Oikos Vs. CCE, Bangalore- [2007 (5) S.T.R. 229 (Tri-Bang.)]
  - (viii) Rana Udyog Pvt. Ltd. Vs.CCE Kolkata.-[2007 (7) S.T.R 526 (Tri-Kol.)]
  - (ix) Koch-Glitsch India Ltd. vs. CCE Vadodara-I reported in [2009 (13) STR 636 (Tri. Ahm.)],
  - (x) Sun Polytron Inds. Ltd. Vs CCE Vapi reported in [2009 (238) E.L.T. 380 (Tri. - Ahmd.)].
- Further Hon'ble Chennai CESTAT in the matter of Fraser & Ross Vs. CCE (ST)Chennai in stay order no.895/2009 dated 20.10.2009 relying on TRU Circular No. 11-3-98- TRU dated 07.10.1998 has observed:

"In view of the fact that the Appellants are only a sub-contractor to the main service provider M/s. Deloitte Haskins & Sells and the entire service tax has been paid by the



*latter, the requirement of pre-deposit is waived and recovery stayed during the pendency of the Appeal!"*

- The Appellant states that the main contractor, i.e. Dipakkumar K Shah has duly paid service tax in respect of taxable services rendered by them to Gujarat Police Housing Corporation Limited including Appellant's portion. The Appellant further submits that they have produced the proof of payment of service tax by the main contractor before the Ld. Adjudicating authority. Hence, there is no evasion of tax and they are not liable to pay service tax again on its revenue of Rs.24,27,588/- received towards services provided to main contractor and therefore the demand raised in SCN and confirmed in the impugned OIO amounting to Rs.3,64, 138/-is liable to set aside.
- The Appellant further submits it is the case of Revenue Neutrality which is well settled law and in the given facts, it is clearly established that total amount of fees received by main contractors has suffered the service tax and there is no loss to the revenue. In this regard, they relies upon the following decisions of the Hon'ble Supreme Court/ various Appellate Tribunals:
  - (xi) > C.C.E. Pune vs. Coca Cola India Put. Ltd., 2007 (213) E.L.T. 490 (S.C.)
  - (xii) > C.C.E. vs. Super Forgings & Steels Ltd., 2007 (212) E.L.T. A151 (S.C.)
  - (xiii) > C.C.E. vs. Jamshedpur Beverages - 2007 (214) E.L.T. 321 (S.C.)
  - (xiv) > Cephram Laboratories Ltd. vs. C.C.E., 2007 (214) E.L.T. 286 (Tri.Del.)
  - (xv) > Kores (India) Ltd. vs. C.C.E. - 2004 (178) E.L.T. 901 (Tri.- Bang.)
  - (xvi) C.C.E. vs. Kitply Industries Ltd. - 2003 (158) E.L.T. A71(S.C.)
- The Appellant further submits that laying of drainage pipeline for GSRTC is exempted from service tax as per entry no 12 of Notification No. 25/2012-ST dated 20-06-2012. The relevant extract of the same is reproduced below:

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

- (a)
- (b)
- (c)
- (d) ...
- (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
- (f)...

The Appellant submitted that as per definition 2(zg) of notification No. 25/2012-ST dated 20-06-2012 "state transport undertaking" has the same meaning as assigned to it in clause (42) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988).

Section 2(42) of Motor Vehicles Act, 1988 defines State Transport undertaking as:

"State transport undertaking" means any undertaking providing road transport service, where such undertaking is carried on by,

- (i) *the Central Government or a State Government;*





(ii) any Road Transport Corporation established under section 3 of the Road Transport

Corporations Act, 1950 (64 of 1950);

(iii) any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments;

(iv) Zilla Parishad or any other similar local authority.

Explanation:- For the purposes of this clause, "road transport service" means a service of motor vehicles carrying passengers or goods or both by road for hire or reward;

In the instant case, the Government of Gujarat had created a separate undertaking under the name and style of 'Public Transport Department' (PTD) which operates under the Administrative control of Transport, Road and Buildings Department.

The definition of "Government Authority" under Notification 25/2012-ST dated 20-06-2012 which reads as under:

(s) "governmental authority" means an authority or a board or any other body;

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by Government,

with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;'

In view of above, it is clear that GSRTC is covered under the definition of Governmental authority. Accordingly, the services of laying of pipeline for drainage for GSRTC is exempt from levy of service tax and impugned OIO demanding service tax on laying of sewerage pipeline for non-commercial purposes to Government/ Governmental Authority is not legal.

- Further the appellant submitted that they have provided the works contract services and determination of value of service portion may be done as per Sub-rule 2A(i)(A) of the Service Tax (Determination of Value) Rules, 2006. The above rule provides that in case of works contract entered into for execution of original works, service tax shall be payable on 40% of the total amount charged for the works contract. Further, value of service portion in execution of other than original works is restricted to 70% of the total amount charged for works contract. In the instant case, as evident from the income tax return filed by the Appellant, the total amount charged for works contract services is Rs.24,27,588/- and the 70% of the same is the taxable value of services which amounts to Rs. 16,99,312/-.
- Further, they also submitted that they were not provided the benefit of Notification No. 33/2012-ST dated 20-06-2012 providing exemption of threshold limit i.e. Rupees Ten Lakhs. The appellant submitted that receipt excess of such threshold can be made liable to tax after considering the same as inclusive of service tax. Appellant is



required to make payment of service tax only in respect of consideration realized for provision of service and where the break-up is not available the service tax liability is to be computed considering the amount received as inclusive of tax. They placed reliance on the following case laws:

- (i) Bhagwati Security Services vs. Commissioner of C.Ex., Meerut-1 [2006 (3) STR 762 (Tri.-Del.)]
- (ii) Panther Detective Services vs. Commissioner of C.Ex., Kanpur [2006 (4) STR 116 (Tri.- Del.)]
- (iii) Advantage Media - 2008 (10) STR 449 (T) Upheld by Supreme Court - 2009 (14) STR J49;
- (iv) Bluechip Corporate - Order No. A/2687-2688/15/STB dated 12.8.2015.

- Further the appellant submitted that recovery cannot be initiated merely on the basis of presumption by considering the revenue receipts reported in the income tax return as a taxable service of the Appellant. They placed reliance on the following case laws:

- (i) Sundaram Finance Ltd. v. ACIT (Supreme Court) [(2012) 10 SCC 430];
- (ii) Hon'ble CESTAT, Allahabad in the matter of Kush Constructions Vs. CGST NACIN 2019 (24) GSTL 606 (Tri - All)

- The appellant stated that service tax has been paid by the main contractor on behalf of Appellant and Appellant has not provided taxable services. Further Appellant has furnished all information required to be furnished under Income Tax Act, 1961 to CBDT which is another wing of revenue just like CBEC/CBIC. Thus, the SCN itself is barred by limitation as SCN is issued after prescribed period from the date of furnishing of returns under Income Tax Act, 1961. They never had intention to suppress the fact and evade to duty payment and therefore the extended period can't be invoked in their case. They requested to allow their appeal.

4. Personal hearing in the matter was held on dated 03.01.2024. Shri Gopal Kriahna Laddha, C.A. & Anjali Bhatia, C.A., appeared on behalf of the appellant. They reiterated the contents of the written submission and also requested for two days time for additional submission which was received in this office.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period FY 2016-17.



6. I find that in the SCN in question, the demand has been raised for the period FY 2016-17 based on the Income Tax Returns filed by the appellant. The appellant didn't responded to the letter issued by the department. Therefore the impugned SCN was issued considering the value shown against "Sales of Services" value provided by the Income Tax Department. Further the appellant filed their submission/reply against the SCN along with the supporting documents. The adjudicating authority adjudicated the matter considering the submission and dropped partial demand and confirmed the rest.

7 Now, as the written & verbal submission by the appellant has been made before me. As per submission filed by the appellant, the appellant was engaged in providing works contract services for repairing of housing of Gujarat State Police Awas Nigam Limited and laying pipeline for drainage for staff quarters of M/s GSRTC.

7.1 As per submission, the appellant has provided the work contract services of repairing of houses to Gujarat Police Awas Nigam Ltd as a sub-contractor on behalf of the main contractor M/s Dipak Kantilal Shah and received consideration Rs. 24,27,588/-. Being the activity taxable, the main contractor has paid the service tax which is evident from impugned OIO also. The main contention of the appellant is that as the main contractor has paid the service tax, they are not liable to pay service tax as per Noti. No 25/2012-ST dated 20.06.2012. While going through the above Notification it is seen that WCS by sub-contractor is exempted only in the case where WCS provided by the main contractor is exempted. In the instant case the main contractor is providing taxable work contract service and paying service tax hence the sub contractor can't be extended the benefit of Noti. No 25/2012-ST dated 20.06.2012 and they are liable to pay service tax upon the services provided by them. Hence, the contention of the appellant doesn't appear to be sustainable.

7.2 Another contention of the appellant is that they have provided the service of laying the drainage pipeline for GSRTC staff quarters and received consideration of Rs. 3,01,078/- and the same is exempted from service tax as per entry no 12(e) of the Notification No 30/2012-ST dated 20.06.2012. The relevant extract of the same is reproduced below:

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

- (a)
- (b) .
- (c)
- (d) ...
- (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or



(f)...

From the submission on record, main dispute appears as whether GSRTC is government authority or not as this was the sole reason to deny the benefit of the above notification. While going through the submission it is seen that the appellant has failed to furnish the relevant documents which can establish that the "GSRTC" fits in the definition of the "Government Authority". In absence of the same I am in the agreement with the view of the adjudicating authority and the benefit of the Noti. No 25/2012-ST dated 20.06.2012 can't be extended to the appellant. However, the benefit of Rule 2A of the Service Tax (Determination of Value) Rules, 2006 may be extended to them. The contention of the appellant doesn't appear to be sustainable.

7.3 Further another contention of the appellant is that they have provided the works contract services and determination of value of service portion may be done as per Sub-rule 2A(i)(A) of the Service Tax (Determination of Value) Rules, 2006. The above rule provides that in case of works contract entered into for execution of original works, service tax shall be payable on 40% of the total amount charged for the works contract. Further, value of service portion in execution of other than original works is restricted to 70% of the total amount charged for works contract. In their case, as evident from the income tax return filed by the Appellant, the total amount charged for works contract services is Rs.24,27,588/- and the 70% of the same is the taxable value of services which amounts to Rs. 16,99,312/- and the same may be considered as taxable value for service tax purpose.

7.4 Further, they also contended that they are eligible for the benefit of threshold limit of 10 Lakhs as per Notification No. 33/2012-ST dated 20-06-2012. In support of their claim they have furnished the ITR of the previous F.Y. 2015-16 in which the "sales of services" is shown as "Zero". Therefore the benefit of the above Noti. may be extended to them.

Further the appellant also contended that receipt excess of such threshold can be made liable to tax after considering the same as inclusive of service tax and sought the duty cum benefit for which they have not submitted any supporting documents or invoice which can establish that they have not collected the service tax separately. Therefore cum duty benefit can't be extended to them.

8. In view of the above discussion, I am of the considered view that the activity carried out by the appellant is liable to Service Tax during the FY 2016-17. The benefit of abatement as per rule 2A of Service Tax (Determination of value) Rules, 2006 and Notification No 33/2012-ST dated 20.06.2012 are required to be extended to the appellant. Considering abatement as per rule 2A of Service Tax (Determination of value) Rules, 2006 the total value comes as under:



Sr. No	Service recipient	Amount	Abated Value
1	M/s Gujarat Police Avas Nigam Ltd.	Rs. 24,27,588/-	16,99,312/- (Being repairing and Maintenance work, 30% abatement as per rule 2A of Service Tax (Determination of value) Rules, 2006
2	M/s GSRTC, Nadiad	Rs. 3,01,078/-	1,20,431/- (60% abatement as per rule 2A of Service Tax (Determination of value) Rules, 2006
Total Taxable Value			18,19,743/-

In view of the above, total abated value comes to Rs. 18,19,743/-. After giving threshold exemption the taxable value comes to Rs. 8,19,743/-. Hence the appellant is liable to pay service tax on the taxable value of Rs. 8,19,743/- which comes to Rs. 1,22,961/- which is required to be recovered from them along with interest and penalty.

9. Accordingly, I pass the following order:

9.1 I uphold service tax to the extent of Rs. 1,22,961/- only;

9.2 Interest as applicable, under section 75 of the Finance Act, 1994 is also recoverable on the service tax amount as per para 9.1;


9.3 I uphold the penalties under section 77(1) & 77(2) and

9.4 I uphold the penalty under section 78 of the Finance Act, 1994, equal to the service tax upheld in para 9.1 above.

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

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

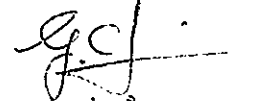
Attested

  
(Manish Kumar)  
Superintendent (Appeals),  
CGST, Ahmedabad

**By RPAD / SPEED POST**

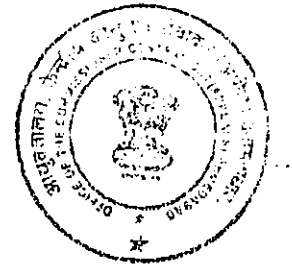
To,

M/s. Atulkumar Kantilal Shah,  
408, Pavan Apartment, Satnam Way Bridge,  
Naroda, Ahmedabad - 382330

  
(ज्ञानचंद जैन)

आयुक्त (अपील्स)

Date: 24.01.24



Appellant

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

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad North
- 3) The Assistant Commissioner, CGST, Division I, Ahmedabad North
- ✓ 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad North  
(for uploading the OIA)
- 5) Guard File
- 6) PA file

