



::आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan,

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क अपील / फाइल संख्या /
Appeal / File No.
V2/155/BVR/ 2017

मूल आदेश सं /
O.I.O. No.
119/AC/Stax/Div/2016-17

दिनांक /
Date
31.03.2017

ख अपील आदेश संख्या (Order-In-Appeal No.):

BHV-EXCUS-000-APP-244-2017-18

आदेश का दिनांक /
Date of Order: 16.03.2018

जारी करने की तारीख /
Date of issue: 02.04.2018

Passed by **Shri Suresh Nandanwar, Commissioner, Central Goods and Service Tax (Audit), Ahmedabad.**

अधिसूचना संख्या २६.१७ दिनांक (टी.एन) शु.उ.के-२०१७/१० २०१७ के साथ पढे बोर्ड ऑफिस आदेश सं-२०१७/०१ दिनां.टी.एसक १६,के अनुसरण में २०१७.११.११ श्री सुरेश नंदनवार, आयुक्त, केन्द्रीय वस्तु एवं सेवा कर (लेखा परीक्षा), अहमदाबाद को वित्त अधिनियम १९९४ की धारा ८५ ३५ की धारा १९४४ केन्द्रीय उत्पाद शुल्क अधिनियम, के अंतर्गत दर्जे की गई अपीलों के सन्दर्भ में आदेश पारित करने के उद्देश्य से अपील प्राधिकारी के रूप में नियुक्त किया गया है

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Suresh Nandanwar, Commissioner, Central Goods and Service Tax (Audit), Ahmedabad has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

ग अपर आयुक्त/ सयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellants & Respondent :-**
**M/s Subhash Virbhanbhai Dodiya, Bileshwar Society, B/h Micro Tower Taluka :
Kodinar, Dist : Junagadh**

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(ii) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(iii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

- (iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

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.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 के धारा 86(1) के अंतर्गत सेवाकर नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियों संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी।

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टैट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत रकम
- (ii) सेनवेट जमा की ली गई गलत राशि
- (iii) सेनवेट जमा नियमवली के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं- 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

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

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) **भारत सरकार को पुनरीक्षण आवेदन :**

Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /

In case of any loss of goods, where the loss occurs 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

- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केंद्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी 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.

- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /

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

- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं। /

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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केंद्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केंद्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी 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.

- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।

जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पेशी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers 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 filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये 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 adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended.

- (F) सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। /

Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। /

For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

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ORDER - IN - APPEAL

M/s Subhash Virbhanbhai Dodiya, Bileshwar Society, B/h Microtower, Taluka Kodinar, Dist: Gir Somnath (henceforth, "appellant") has filed the present appeal against the Order-in-Original No.119/AC/STAX/DIV/2016-17 dated 31.03.2017 (henceforth, "impugned order") passed by the Assistant Commissioner (AE), Central Excise, HQ, Bhavnagar (henceforth, "adjudicating authority").

2. Briefly stated, the facts of the case are that a show cause notice was issued to the appellant on 18.10.2013 for recovery of Service Tax of Rs.34,70,000/- which was not paid during the period 2008-09 to 2012-13. The adjudicating authority, under the impugned order, confirmed the demand of Rs.13,16,354/-, dropped the demand of Rs. 21,53,646/- appropriated the amount of Rs. 58,390/- already paid under VCES Scheme. The adjudicating authority ordered for recovery of rest of the amount along with interest. Further, penalty of Rs.13,16,354/- was imposed under Section 78(1) and Rs. 10,000/-Rs. 5000/- under Section 77(2) and 77(1(a) respectively of the Finance Act,1994.

3. The appellant has filed the appeal mainly on the ground; that they have received Rs. 61,56,867/- from M/s. Ambuja Cement Ltd towards the maintenance of public roads on which service tax was exempted even after 01.07.2012; that the benefit of threshold exemption of Rs. 10 Lakhs for the period 2008-09 to 2012-13 was admissible to them but not allowed; that abatement of 67% under notification no. 1/2006-ST amended by notification no.26/2012-ST for the services rendered to clients like GETCO was not considered; that there was a clerical error on part of M/s. Ambuja Foundation in showing payment of Rs. 3,32,246/- with the PAN of the appellant therein and for the said income of Rs. 3,32,246/-, the appellant was held liable for service tax though the appellant had clarified the same in an affidavit; The appellant has also contested the suppression of facts well as imposition of interest and penalties. Some case laws have also been cited which have been relied upon.

4. Subsequent to the filing of appeal, Board vide Order No. 05/2017-Service Tax issued vide F.No. 137/13/2017-Service Tax dated 16.11.2017 has nominated the Commissioner, Central Tax Audit, Ahmedabad as Commissioner



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(Appeals)/Appellate Authority. Accordingly, I take up this appeal for consideration.

5. A personal hearing was held on 09.03.2018, wherein Shri Amol Paresh Dave Advocate, represented the appellant and filed written submission dated 9.3.2018 and also reiterated the grounds of appeal .

6. I have carefully gone through the appeal papers. Considering that appeal against impugned order passed on 31.03.2017 has been filed on 16.05.2017, I find that the appeal has been filed within the time limit of three months prescribed under Section 85 of the Finance Act,1994. Regarding mandatory pre-deposit, I note that out of the confirmed demand of Rs. 13,16,354/-, the amount of Rs.58,390/- was already paid at the time of availing VCES scheme and which has been appropriated in the impugned order. Further the appellant has made payment of Rs. 40,337/- vide challan No. 02444 dated 11.05.2017 which constitutes 7.5% of the demand. Accordingly, the requirement of mandatory pre-deposit stands complied with.

7. The issues which are to be decided is as under:-

- (i) whether the income of Rs. 61,56,867/- received by the appellant during the year 2012-13 from M/s. Ambuja Cement Ltd for repair and maintenance of the road appellant is eligible for exemption from Service tax on the ground that the road is public road i.e. for public use.
- (ii) whether the benefit of threshold exemption upto Rs. 10 Lakhs is available to the appellant for the year 2008-09 to 2012-13 and whether abatement of 67% is available to them on the services rendered to M/s. GETCO
- (iii) whether the income reflected in the 26AS statement of the appellant representing the income received from Ambuja Foundation is liable to service tax or otherwise
- (iv) whether extended period can be invoked



(v) whether interest as well as penalties under Section 77 and 78 can be imposed

8. The appellant has received income of Rs. 61,56,867/- from M/s. Ambuja Cement Ltd during the year 2012-13, which they submit, is the income for the repair and maintenance of road work carried upon by them for M/s. Ambuja Cement Ltd. It is submitted that the road for which the said work has been done is public road falling outside the premises of M/s. Ambuja Cement Ltd. I find that the adjudicating authority has considered such services i.e maintenance and repair of roads as 'other than public use roads' and held these service liable to service tax. At the outset, I would examine the legal position as it stood during the period of service provided i.e 2012-13. I observe that service relating to management, repair and maintenance of roads was exempted by virtue of Notification No. 24/2009-ST dated 27.7.2009. The relevant portion of the said notification is as under:-

MINISTRY OF FINANCE
(Department of Revenue)

New Delhi, the 27th July, 2009.

Notification No. 24/2009-Service Tax

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the Finance Act), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the taxable service, referred to in sub-clause (zzg) of clause (105) of section 65 of the Finance Act, 1994, provided to any person by any other person in relation to management, maintenance or repair of roads, from the whole of the service tax leviable thereon under section 66 of the said Finance Act.

[F.No.B-1/1/2009-TRU]

(Prashant Kumar)

Under Secretary to the Government of India

Further, vide the Finance Act, 2012, two new sections 97 and 98 have been inserted in Chapter V of the Finance Act, 1994 with a view to extend service tax exemption retrospectively for repair of roads and non-commercial government buildings with retrospective effect.

Section 97 of the Finance Act, 1994 reads as under:-

["97. (1) Notwithstanding anything contained in section 66, no service tax shall be levied or collected in respect of management, maintenance or repair of roads, during the period on and from the 16th day of June, 2005 to the 26th day of July, 2009 (both days inclusive).

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(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President.]

It is thus evident from the above mentioned Section 97 that service tax is not applicable in respect of service provided for management, maintenance or repair of roads during the period from the 16th day of June, 2005 to the 26th day of July, 2009 (both days inclusive).

Consequently, vide Notification No. 34/2012-ST dated 20.06.2012, the Notification No. 24/2009-ST dated 27.07.2009 was rescinded w.e.f 01.07.2012. Hence the management, maintenance or repair of roads became taxable again w.e.f 01.07.2012.

Further, vide Notification No. 25/2012-ST dtd.20.06.2012, the said service has been granted exemption as under :-

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;

As per para 2(q) of the above Notification, the definition of general public is given as -

(q)"general public" means the body of people at large sufficiently defined by some common quality of public or impersonal nature;

From the above, I find that the service relating to repair and maintenance of road is exempted only if the road is used by general public. The appellant has submitted that the road for which he has carried out repair and maintenance is used by public but has not produced any evidence to prove that such roads are declared public roads by the local /state authority. The appellant has only produced the copies of invoices raised by him which cannot be the sole basis for claiming exemption under the Notification No. 25/2012-ST dated 20.06.2012, as to establish a road to be a public road it should be supported by a document from the local/state authority, if the road is a public road. I note that the appellant had produced various certificates from various Government authorities like Executive Engineer Salinity Control Division, Bhavnagar, Executive Engineer, Panchayat Irrigation Department, Junagadh,

Executive Engineer Gujarat Energy Transmission Corporation Ltd (GETCO), Kodinar regarding non- payment of service tax before the adjudicating authority but has not produced any certificate from concerned authority to prove that the road is for public use. In absence of any such evidence, I am unable to allow the exemption from service tax on the income of Rs. 61,56,867/- received by the appellant from M/s. Ambuja Cement Ltd.

9. The appellant has contended that the adjudicating authority has not taken into consideration the threshold exemption of Rs.10 Lakhs admissible to them for each of the financial year. It is also their plea that the benefit of abatement in respect of the services provided to GETCO has not been allowed by the adjudicating authority. However, I find that the appellant had not raised both these issues before the adjudicating authority. They had submitted that they had filed declaration under VCES-2013 scheme and paid service tax under the said scheme. The adjudicating authority had found that the declared dues under VCES-2013 scheme, to be incorrect and also noted that the appellant had not produced the VCES- 3 certificate from designated authority . In view of the above, I hold that the issues pertaining to threshold exemption as well as abatement cannot be taken up at this stage as the same were not contested earlier before adjudicating authority.

(iii) whether the income reflected in the 26AS statement of the appellant representing the income received from Ambuja Foundation is liable to service tax or otherwise.

Regarding the amount reflected in their 26AS statement, the appellant has submitted that a sum of Rs. 3,32,246/- was not the income earned by the appellant but it was reflected in 26AS statement of Ambuja Foundation because of PAN of the appellant having been wrongly mentioned by Ambuja Foundation. I find that the 26AS statement being a part of Income tax document, any error has to be rectified with the Income Tax department first and then only any correction in income can be considered. The appellant has not been able to produce neither before the adjudicating authority nor before me any such document from Income Tax department to substantiate their claim. Hence I do not find substance in their submission.

10. As far as invocation of extended period of demand is concerned, I find that the fact that the appellant had not taken into account the correct taxable value for the purpose of payment of service tax as applicable, was revealed only during the verification of records of the appellant carried out by the



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 department. This act of deliberate defiance of law has to be reprimanded. I, therefore find that extended period has been correctly invoked for demand of service tax . The case laws cited by the noticee are not relevant in the instant case as the noticee had failed to fulfill their legal obligation by assessing the true taxable value and discharging the service tax liability on the same.

The Hon'ble Supreme Court in the case of Commissioner of C. Ex., Aurangabad Versus Bajaj Auto Ltd - 2010 (260) E.L.T. 17 (S.C.) - has held:

"12. *Section 11A of the Act empowers the central excise officer to initiate proceedings where duty has not been levied or short levied within six months from the relevant date. But the proviso to Section 11A(1), provides an extended period of limitation provided the duty is not levied or paid or which has been short-levied or short-paid or erroneously refunded, if there is fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty. The extended period so provided is of five years instead of six months. Since the proviso extends the period of limitation from six months to five years, it needs to be construed strictly. The initial burden is on the department to prove that the situation visualized by the proviso existed. But the burden shifts on the assessee once the department is able to produce material to show that the appellant is guilty of any of those situations visualized in the Section."*

In this case also I find that the department has been able to bring on record that the appellant had failed to pay service tax. The appellant failed to offer any plausible explanation except to cite some judgments, which as discussed supra I have found to be distinguishable in the facts of the present case. Therefore, I find that the extended period for demand of Service tax not paid, is rightly invoked in this case. I also find that by acting in the manner as above, the said appellant have rendered themselves liable for penal action under Section 78 (1) of the Finance Act, 1994.

With regard to the penalty imposed under Section 77(2) and Section 77(1)(a) of the said Act, the appellant has submitted that they cannot be penalized under different sections for the same alleged offence. However, it is pertinent to mention here that different sections have been provided for different offences. Apart from imposition of penalty under Section 78(1) above, the penalty under Section 77(1)(a) was imposed on the appellant as it was found that they had failed to take registration in accordance with Section 69 of the said Act. Further penalty under Section 77(2) of the said Act was also imposed as the adjudicating authority was noticed that there was failure on the part of the appellant to file the prescribed return appropriately as provided under Section 70 of the Act read with Rule 7 of the Service tax Rules, 1994.

From the above, it is clear that specific penalties have been provided for specific violations of the Act or Rules and accordingly for each such violation, specific penalty as provided therein has been imposed by the adjudicating authority.

11. In view of the above, I reject the appeal and uphold the OIO.

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

The appeal filed by the appellant stand disposed off in above terms.



(सुरेश नंदनवार)

आयुक्त

केंद्रीय कर लेखा परीक्षा

अहमदाबाद

F.No. V2/155/BVR/2017

Date: 16.03.2018

By R.P.A.D.

To,

M/s Subhash Virbhanbhai Dodiya ,
Bileshwar Society, B/h Microtower,
Taluka Kodinar,
Dist: Gir Somnath

Copy to:

- 1.The Chief Commissioner of CGST, Ahmedabad Zone.
- 2.The Commissioner of CGST, Bhavnagar.
- 3.The Additional Commissioner, CGST (System), Bhavnagar.
- 4.The Asstt./Deputy Commissioner, CGST, Division-Junagadh.
5. The Superintendent, CGST, Range Junagadh.
6. Guard File.