



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

द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan,  
 रेस कोर्स रिंग रोड, / Race Course Ring Road,  
**राजकोट / Rajkot - 360 001**



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**रजिस्टर्ड डाक ए. डी. द्वारा :-**

क	अपील / फाइल संख्या Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/186 /RAJ/2016	51/ADC/PV/2015-16	31.03.2016

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

**RAJ-EXCUS-000-APP-031 -2017-18**

आदेश का दिनांक / Date of Order:	<b>09.08.2017</b>	जारी करने की तारीख / Date of issue:	<b>11.08.2017</b>
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**कुमार संतोष, आयुक्त (अपील), राजकोट द्वारा पारित /**  
**Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot**

ग अथवा आयुक्त/सहायक आयुक्त/उपायुक्त/सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/सेवा कर, राजकोट / जामनगर / गण्डीधाम द्वारा उपरोक्तित जरी 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 Appellant & Respondent :-**  
**M/s. Bindiyaben Nemchand Kuvadiya, Kailash Nagar, Near Power House,Dhoraji - 360 410,Dist : Rajkot**

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपरोक्त अधिकारी / अधिकरण के समक्ष अपील दाखल 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 अपील/अपील न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत एवं क्लिफ अधिनियम, 1994 की धारा 86 के अन्तर्गत 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:-
- (i) सर्वोच्च न्यायालय से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील/अपील न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पारम, नई दिल्ली, को की जायी चाहिए।  
 The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Param, New Delhi in all matters relating to classification and valuation.
- (ii) उपरोक्त परिच्छेद 1(a) में बताया गए अपील के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील/अपील न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहामली भवन, असारवा अहमदाबाद को की जायी चाहिए।  
 To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad in case of appeals other than as mentioned in para- 1(a) above
- (iii) अपील/अपील न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवाली, 2001, के नियम 6 के अन्तर्गत निर्धारित किए गये फॉर्म EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा, राजस्व की सीमा और जल्दबाजी का जुमान, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक, अथवा 50 लाख रुपये 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 अपील/अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार 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 अपील/अपील न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवंटन-पत्र के साथ 500/- रुपये 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) अपील/अपील न्यायाधिकरण के समक्ष अपील, क्लिफ अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (इनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की सीमा, राजस्व की सीमा और जल्दबाजी का जुमान, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक, अथवा 50 लाख रुपये 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 अपील/अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार 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 अपील/अपील न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवंटन-पत्र के साथ 500/- रुपये 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 fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of 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) विल अर्पितियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दायें की गयी अपील, सेवाकर नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म S.T.-7 में की जा सकती एवं उसके साथ अपील, केन्द्रीय उत्पाद शुल्क अध्याय अध्याय (अपील), केन्द्रीय उत्पाद शुल्क द्वारा जारी आदेश की प्रतियाँ संलग्न की (उनमें से एक प्रति प्रामाणिक होनी चाहिए) और अपील के साथ सहायक अपील अथवा उपापेक्षित, केन्द्रीय उत्पाद शुल्क सेवाकर, को अपील न्यायाधिकरण को आवेदन दायें 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 Form 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) सौदा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (सेस्टैट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एक के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपील न्यायाधिकरण में अपील करने समय उत्पाद शुल्क/सेवा कर भाग के 10 प्रतिशत (10%), जब भाग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत उक्त कि जम्मे वाली अपेक्षित टैक्स रशि टस करोड़ रुपय से अधिक न हो।

- केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'संयुक्त रूप से शुल्क' में निम्न शामिल है
- (i) धारा 11 डी के अंतर्गत रकम
  - (ii) सेस्टैट उक्त की ली गये गलत रशि
  - (iii) सेस्टैट उक्त नियमवली के नियम 6 के अंतर्गत टैक्स रकम
- बशर्त यह कि इस धारा के अध्याय वित्तीय (सं. 2) अधिनियम 2014 के अंतर्गत से पूर्व किसी अपील न्यायाधिकरण के समक्ष विवादित स्थिति अर्थात् अपील को जन्म नहीं होगी।

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 अधिका निर्देशित/विहित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम पठन के अंतर्गत उक्त अधिका, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त सचालय, राजस विभाग, चौथी मंजिल, जीवन टैप बिल्डिंग, संसद भवन, 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 ग्राहक के किसी नुकसान के मामले में, जहां नुकसान किसी ग्राहक 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 ग्राहक के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में ग्राहक 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 ग्राहक के विनिर्माण में प्रयुक्त कच्चे ग्राहक या अर्धी गूँ केन्द्रीय उत्पाद शुल्क के छूट (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 ग्राहक निर्यात किया गया है। /  
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सुविधित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इट्टी ईकाई इस अधिनियम एवं इसके विभिन्न धाराओं के तहत राज्य की गई है और ऐसे आदेश जो अपील (अपील) के द्वारा विल अर्पितियम (सं. 2), 1998 की धारा 109 के द्वारा निर्यात की गई लागू अध्याय समन्वयित पर या बाद में प्रविष्ट 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 प्रथम संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमवली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संलग्न के 3 महीने के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अद्यवसी के साथ के ली 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 O/O 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 विनिर्दिष्ट निर्धारित शुल्क की अद्यवसी की जानी चाहिए। /  
जहां 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 क्रम आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त टन में किया जाना चाहिए। इस लक्ष्य के होते हुए भी की निम्न पढी कपड़े से पहले के लिए कल्पित/अपील न्यायाधिकरण के एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। /  
In case, if the order covers various numbers of order- in Original, fee for each O.L.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if existing Rs. 1 lakh fee of Rs. 1000/- for each.

(E) न्यायाधीन न्यायालय शुल्क अधिनियम, 1975, के अनुच्छेद-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.L.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-I in terms of the Court Fee Act, 1975, as amended.

(F) सौदा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (कठोर विधि) विधिमाली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान अवगत 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) उक्त अपील न्यायाधिकरण को अपील दायें करने में संबंधित न्यायक, विन्यून और सर्वोच्च न्यायाधीश के लिए, अपील न्यायाधिकरण वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) की टैब तकनीक है। /  
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](http://www.cbec.gov.in)

**ORDER-IN-APPEAL**

Smt. Bindiyaben Nemichand Kuvadiya, residing at Kailashnagar, Near Power House, Dhoraji – 364 410 (hereinafter referred to as "the appellant") has filed the present appeal against the Order-in-Original No.: 51/ADC/PV/2015 – 16 dated 31.03.2016 (hereinafter referred to as the 'impugned order') passed by the Additional Commissioner, Central Excise & Service Tax, Rajkot (hereinafter referred to as the 'the lower adjudicating authority').

2. The facts of the case are that during course of inquiry initiated by the department, it was noticed that the appellant was engaged in providing taxable services of "Erection, Commissioning & Installation Service" and "Man Power Supply Service" to M/s. Paschim Gujarat Vij Company Limited (hereinafter referred to as "PGVCL") but not paying service tax on such services during the financial year 2010 – 11 to 2013 – 14. The appellant vide letter dated 14.02.2015 submitted that they were not required to get their records audited under any statute and audit report was not applicable to them and they are covered under Section 44AD of the Income Tax Act and hence not required to maintain regular books of accounts for the purpose of Income Tax Act; that they had rendered services to PGVCL for which they did not collect any service tax nor then paid any service tax and thus no service tax return was filed by them.

2.1 A statement of the appellant was recorded on 01.06.2015, wherein they, inter-alia, stated that they had rendered services under the category of erection, commissioning of High Tension / Low Tension line, earthing and manpower supply as per contracts entered between them and PGVCL; that they were filling income tax return but did not file any return with sales tax department; that they had not obtained service tax registration due to unawareness; they agreed to pay service tax along with interest and penalty subject to condition that they will pay as and when PGVCL will pay them the same.

2.2 The inquiry revealed that the appellant was earlier registered with the service tax department, however, they did not pay service tax to the department, which was accepted by the appellant in their subsequent statement.

2.3 Show Cause Notice bearing No. V.ST/15 – 30/ADJ/2015 – 16 dated 15.07.2015 for the period from 2010 – 11 to 2013 – 14 was issued to the appellant as to why the service rendered by them to PGVCL should not be classified as "Erection, Commissioning & Installation Service" as defined under Section 65(64) of the Finance Act, 1994 (hereinafter referred to as "the Act") and liable to service tax under Section

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65 (105) (zzd) of the Act and proposed (i) recovery of service tax of Rs. 13,61,842/- under proviso to Section 73(1) of the Act along with interest under Section 75 of the Act; (ii) imposition of penalties under Section 76, 77 and 78 of the Act. The impugned order confirmed the demand of service tax of Rs. 13,61,842/- under proviso to Section 73(1) of the Act; ordered recovery of interest under Section 75 of the Act and also imposed penalty under Section 78 as well as under Section 77 of the Act, while penalty under Section 76 of the Act was not imposed.

3. Being aggrieved by the impugned order, the appellant has preferred the present appeal on the grounds as under:

- (a) They are engaged to provide the service viz. "Erection, Commissioning & Installation Service" as held vide impugned order to PGVCL only which is government company wholly owned and managed by the Government of Gujarat. To provide electricity is one of the primary functions of the government and thus it cannot be said to be for the purpose of commerce, industry business or profession and covered under clause 12(a) of Mega Exemption Notification No. 25/2012 – ST dated 20.06.2012.
- (b) They are eligible for benefit of exemption available under Notification No. (1) 45/2010 – ST dated 20.07.2010; (2) 32/2010 – ST dated 22.06.2010 and (3) 11/2010 – ST dated 27.02.2010 and service provided by them are clearly out of ambit of service tax upto 30.06.2012. They relied on the decisions (1) Noida Power Co. Ltd. 2014 (33) STR 383 (Tri. Del.); (2) Kedar Constructions 2015 (37) STR 631 (Tri. Mumbai).
- (c) They are eligible for benefits of Notification No. 01/2006 dated 01.03.2006 and Rule 2A of the Service Tax (Determination of Value) Rules, 2006 as they carried out the work contract with material for original work. Thus, the service tax should be calculated on abated value not on full value as in the impugned order.
- (d) They are also eligible for benefit of Small Service Providers exemption available under Notification No. 06/2005 as amended and/or Notification No. 33/2012.
- (e) The Show Cause Notice is time barred in terms of provisions of Section 73(1) of the Act.
- (f) The Show Cause Notice is liable to be dropped on the ground that the SCN does not show the bifurcation as to what amount of service tax is demanded

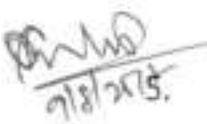
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for particular service upto 30.06.2012 and what amount of service tax is demanded for service other than service specified in negative list i. e. from 01.07.2012 negative list regime is applicable.

- (g) *The Show Cause Notice has been issued without providing crucial relied upon documents i. e. copy of statement of the appellant recorded under Section 14 of the Central Excise Act, 1944.*
- (h) They are eligible for cum-tax benefit as they have not collected any amount of service tax from PGVCL
- (i) Extended period of limitation should not be invoked and penalty under Section 78 of the Act should not be imposed as they have not collected any amount of service tax from PGVCL and hence no intention to evade payment of service tax by reason of suppression etc. They relied on the decision of CESTAT in case of Vir Teja Roadlines 2012 (27) STR 290 (Tri.- Ahmd.). They are also eligible for benefit of 50% reduced penalty, assuming not admitting penalty is payable, as per first proviso to Section 78 since complete details of transactions are recorded in the specified records.
- (j) Penalty under Section 77 (2) is imposed for filing incorrect ST-3 returns but the impugned order at para 1.13 has mentioned that "The said Noticee has not filed service tax return during the period of financial year 2010-11 to 2013-14...". Thus there are contrary findings in the impugned order. Therefore, penalty should not be imposed under Section 77.

4. Personal Hearing in the matter was held on 27.06.2017 when Shri Keyur P. Radia, C.A. appeared on behalf of the appellant and reiterated the grounds of appeal and submitted written submission emphasizing that the appellant has provided service in relation to transmission and distribution of electricity, which were exempted by different Notifications upto 21.06.2010 and again from 22.06.2010 to 30.06.2012; that the appellant is required to pay service tax with effect from 01.07.2012 only but under works contract and service tax is required to be calculated as provided under Rule 2A of the Service Tax (Determination of Value) Rules, 2006 which comes to Rs. 1,67,833/- only; that penalty under Section 78 of the Act is not justified at all. They submitted affidavit under oath to justifying support delay in filing of appeal.

#### Findings:

 I have carefully gone through the impugned order, appeal memorandum, records of personal hearing and the documents submitted by the appellant. The main

issues to be decided in the (i) application for condonation of delay is proper or otherwise; (ii) whether the principles of natural justice have been followed during adjudication; (iii) whether the appellant is liable to pay service tax on the services provided to PGVCL and if yes, whether penalty is imposable on the appellant under Section 77 & Section 78 of the Act or otherwise; (iv) whether the appellant is eligible for exemption available as per claimed Notifications or otherwise

6. The appellant has filed the present appeal, along with application for condonation of delay, on 01.07.2016 i.e. on 85<sup>th</sup> day from 07.04.2016 – date of receipt of the impugned order dated 31.03.2016. This appellate authority is empowered under Section 35 of the Central Excise Act, 1944 to condone delay of 30 days beyond normal period of 60 days on justified ground. The assessee has given reasons of delay vide affidavit on oath. I am inclined to condone delay in filing appeal. I do so and proceed to decide the appeal on merits.

7. I find that the appellant has vehemently argued non-supply of relied upon documents to them and also non-following of principles of natural justice. The appellant has referred at Para 8.1 in the grounds of appeal that copy of statement of the proprietor recorded under Section 14 of the Central Excise Act, 1944 has not been provided to them. The appellant had also filed a letter dated 16.03.2016 to the lower adjudicating authority that the impugned SCN has been issued without providing a crucial relied upon document viz. copy of the statement of the proprietor recorded under Section 14 of the Central Excise Act, 1944, which is also written at Para No. 2.14 of the portion of "DEFENCE AND PERSONAL HEARING" of the impugned order but the lower adjudicating authority neither supplied that document nor discussed as to why the said document was not supplied, which is clear violation of the principles of natural justice. I am of the considered view that copy of this statement is required to be supplied to the appellant for their effective reply.

7.1 I rely upon the decision of the Hon'ble CESTAT, Allahabad in case of OTR Papers (P) Ltd. reported as 2016 (336) E. L. T. 529 (Tri. – All.) to remand this case to be decided a fresh after giving copy of statement of the proprietor recorded by the department. I also rely upon decision of the Hon'ble CESTAT, Delhi in the case of Singh Alloys (P) Ltd. reported as 2012(284) ELT 97 (Tri-Del) to hold that power to remand in appropriate cases is inbuilt in Section 35A(3) of the Central Excise Act, 1944 even after amendment. The Hon'ble CESTAT in the case of Honda Seil Power Products Ltd. reported as 2013 (287) ELT 353 (Tri-Del) has also held that Commissioner (Appeals) has inherent power to remand a case under the provisions of Section 35A(3) of the Central Excise Act, 1944. The Hon'ble High Court of Gujarat, in Tax Appeal No. 276 of 2014 of Associated Hotels Ltd. has also observed that even after amendment in Section

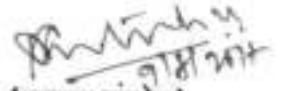
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35A(3) of the Central Excise Act, 1944 w. e. f. 11.05.2011 the Commissioner(Appeals) has powers to remand.

8. In view of the above facts and circumstances, I set aside the impugned order and remand the case to the jurisdictional CGST & C. Ex. authority to provide the required documents and to give fair opportunity of hearing to the appellant and thereafter to pass speaking order in the matter at an early date.

९. अपीलकर्ता द्वारा दर्ज की गई अपीलों का निपटारा उपरोक्त तरीके से किया जाता है।

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

  
(कुमार संतोष)  
आयुक्त (अपील्स)

By R.P.A.D.

To, Smt. Bindiyaben Nemichand Kuvadiya, Residing at Kailashnagar, Near Power House, Dhoraji- Distt. Rajkot 364410	प्रति, श्रीमति बिन्द्याबेन नेमिचन्द कूवाडिया, कैलाशनगर, पावर हाउस के पास, धोराजी - 364410.
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**Copy to:**

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
3. The Assistant Commissioner, GST & Central Excise Division – II, Rajkot.
4. Guard File.