



पुस्तक सं. १५९१०१३/२०७२, काठमाडौं, नेपाल  
३५, २०७, काठमाडौं, नेपाल  
काठमाडौं, नेपाल - २०७२  
Toll-Free No: १९१ - २४९९२२२ - २४९९२२२, काठमाडौं, नेपाल

**संकेत संख्या की जानकारी -**

क	कडी - काठमाडौं	दस्तावेज सं. - APP/APP/19/15	कडी सं. - 01/15/19	दिनांक - 2019/02/19
ख	कडी सं. - ३९९७/२०१९		कडी सं. - ३९९७/२०१९	

कडी संख्या संख्या: 3997-19-APP/15/19

**BUY-EXCUS-000-APP-41-2019**

कडी सं. / दिनांक - Date of Order:	14.02.2019	कडी सं. / दिनांक - Date of Issue:	19.02.2019
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कडी सं. - ३९९७/२०१९, काठमाडौं, नेपाल  
Posted by Sdri Kumar Sushil, Principal Commissioner (Appellate, Kathmandu)

कडी संख्या संख्या: ३९९७/२०१९, काठमाडौं, नेपाल  
कडी सं. - ३९९७/२०१९, काठमाडौं, नेपाल  
कडी सं. - ३९९७/२०१९, काठमाडौं, नेपाल

कडी संख्या संख्या: ३९९७/२०१९, काठमाडौं, नेपाल  
316 Gular Industrial Development Corporation, GIDCO, Fautala-05, Kathmandu.

कडी संख्या संख्या: ३९९७/२०१९, काठमाडौं, नेपाल  
316 Gular Industrial Development Corporation, GIDCO, Fautala-05, Kathmandu.

कडी संख्या संख्या: ३९९७/२०१९, काठमाडौं, नेपाल  
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कडी संख्या संख्या: ३९९७/२०१९, काठमाडौं, नेपाल  
316 Gular Industrial Development Corporation, GIDCO, Fautala-05, Kathmandu.

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**ORDER-IN-APPEAL**

M/s. Gujarat Industrial Development Corporation, Bhavnagar (hereinafter referred to as "Appellant") filed appeal No. VZ/40/BVA/2018-19 against Order-in-Original No. BIV-EXCLS-000-JC-58/2017-18 dated 26.7.2018 (hereinafter referred to as "impugned order") passed by the Jt. Commissioner, CGST & Central Excise, Bhavnagar (hereinafter referred to as "lower adjudicating authority").

2. The brief facts of the case are that the Appellant, a Government of Gujarat undertaking, was established under the Gujarat Industrial Development Act, 1967. The Appellant was registered with Service Tax having registration no. AAJPCG80330SD003 for 'Renting of Immovable Property Service'.

2.1 The Audit of the records of the Appellant revealed that they were generating incomes from various operations and booking these incomes under different heads like Non Agriculture Conversion Charge, Transfer Fee, Infrastructure Upgradation Charge, Plot Ful. Payment, Administration Charge, Misc allowance, Service Charge, Security Fee, Late Construction Approval, Late Plan Approval, Godown Rent, Lease Rent etc which were taxable and the Appellant was liable to pay Service Tax under the category of 'Renting of Immovable Property Service'. The Audit also felt that the Appellant was receiving consideration in the form of 'Water Charge', which was liable to service tax under the category of "Support Service of Business or Commerce". However, the Appellant was not paying Service Tax on these incomes.

2.4 Show Cause Notice No. V.SF/15-16/Audit-II/SCN/16-17 dated 3.10.2016 was issued by the Addl. Commissioner, Central Excise, Audit-II, Rajkot, for the period from 2011-12 to 2014-15, calling the Appellant to show cause as to why service Tax of Rs. 1,82,69,374/- in respect of 'Renting of Immovable Property Service', Rs.14,18,240/- under 'Support Service of Business or Commerce' and Education Cess and S. I.E. of Rs. 39,442/- short paid during 2011-12 should not be demanded and relieved from them under Section 73(i) of the Finance Act, 1994, along with interest and Short paid interest of Rs. 2,25,743/- under Section 75 of the Act and why penalty under Sections 76.77 and 78 of the Act should not be imposed on them.

2.5 The above Show Cause Notice was adjudicated by the Joint Commissioner, CGST and Central Excise, Bhavnagar vide the Impugned order, which confirmed Service Tax demand of Rs. 1,82,69,374/- in respect of 'Renting of Immovable Property Service', Rs.14,18,240/- under 'Support Service of

Business or Commerce' was not a business of the Class and Secondary and Higher Education Class comprising of Rs. 10,000/- per month for the recovery under Section 73(1) of the Act and the interest on Rs. 10,000/- was recovered under Section 75 of the Act, also ordered recovery of interest of Rs. 2,000/- per month paid under Section 75 of the Act and imposed penalty of Rs. 20,000/- per month under Section 78 of the Act and Rs. 10,000/- under Section 77 of the Act.

3. Being aggrieved by the impugned order, the Appellant has preferred appeal on various grounds, which are as follows:-

(i) That the Appellant has been established under the Gujarat Industrial Development Act, 1962 for the purpose of Gujarat for the purpose of securing orderly establishment and development of industries in industrial areas and industrial estates, to attract and to facilitating commercial centres in connection with the establishment and development of such industries. Various areas in Gujarat where land had been acquired were demarcated as SIDC zones and new industrial zones with a view to the purpose of land were allotted to willing industries for establishment and development of industries. Development could take place in a smooth and efficient manner.

(ii) That Section 7 of 1962 Act was to be various services to be performed by the Appellant which have been set forth with assistance in rapid and orderly establishment, growth and development of business development of land on its own account after the state had acquired the same for the purpose of facilitating the location of industries and commercial centres, financial assistance by way of loans to industries to provide electricity, water, industrial estates or areas and undertaking schemes for providing utility and commercial establishments with such structures as may be necessary for the use by establishment, growth and development. The Appellant has provided such structure are roads, sustained water supply, drainage and sewerage, electricity, water supply, further, maintenance and upgrade of roads, etc. After various acts so a primary responsibility of the Appellant to provide services set forth in the Act. The Appellant incurs expenditure on providing such services and collects maintenance charges from the industries.

(iii) The Appellant has a right of Transfer of Land for the purpose of transfer or lease in land of the Appellant from one person to another. Amount collected as 'Transfer Fee' is not in the nature of the revenue property of the State as of immovable Property Service' and to be treated as such. The 'Selling of immovable property' includes making, taking, taking, etc. and any other arrangements of immovable property or any other arrangements of immovable property or

commercial. The transfer fee cannot be said to be collected for renting / leasing / letting or any other similar arrangements. The service tax demand has been confirmed under the category of 'renting of immovable property service' without giving legal reasoning as to how the amount collected as transfer fees satisfies the conditions as stated under the definition of the said category. Further, as per definition of 'services' contained in section 65B(4) of the Act, transfer of title in immovable property by way of sale, gift or in any other manner is excluded from the levy of service tax. Hence, they are not liable to pay Service Tax on 'Transfer Fee' collected by them during the period 2011-12 to 2014-15.

(iv) The Appellant develops infrastructure like roads, sustained water supply, drainage etc. within the industrial areas or estates which is their primary responsibility in view of Section 37(1) of GID Act. For any estate developed under GID Act, 50% of the contribution is made by the State Government and balance 50% contribution is made in the ratio of 60:40 i.e. 50% is contributed by the Appellant and 40% is contributed by Industrial association. The contribution towards development of the estate as undertaken by the Appellant is termed as 'Infrastructure Upgradation Fund'. Post development of the estate, the Appellant recovers total fund contributed by them and industrial association from the plot allottees and transfers 40% of the fund to respective industrial association. The Appellant is discharging service tax on their 60% contribution w.e.f. 07.07.2010 under service category of 'Renting of Immovable Property service'. However, they are not liable to pay service tax on 40% of contribution since the same is not retained by them but passed on to respective industrial association and also shown as liability in their financial statement. Since there is no provision of service, service tax demand under the service category of 'renting of immovable property service' is not sustainable.

(v) The Appellant acquires land from the state government and converts agricultural land into non agricultural purpose in order to develop industrial estate and makes payment of Non Agricultural conversion charge to the State Revenue department and recovers the same from the plot allottees. The Appellant is discharging service tax w.e.f. 01.07.2012 i.e. after introduction of negative list. As there was no specific entry prior to introduction of negative list, the Appellant had not discharged service tax on the same. The impugned order has confirmed service tax demand under the category of 'Renting of Immovable Property service' without giving legal reasoning as to how the amount collected as 'NA Charges' satisfies the conditions as stated under the definition of the said category.



(vii) The Appellant is liable to pay service tax in case of non utilization of plot for business activity. The Appellant is liable to pay service tax on non utilization penalty as the same is defined in the meaning of financial penalties and not service tax as per section 65(12) of Finance Act, 1994 under 'letting of Immovable Property Services'.

(viii) The Appellant is liable to pay service tax on supply of water to the plot holders. The activity carried out by providing a supply of water and since water being goods, service tax is levied on the level of the supply of water to the plot holders. Further as per Gujarat Finance Act of The Act, 2006, water is exempted vide entry number 93 of schedule 1 of the said Act. It shows that the intention of the legislature is to classify water as goods. Reference is placed on the case law of Radius Water Ltd. - 2015 (27) 209 109 110 111 112 113 wherein it is held that supply of water to the State Corporation is not for availing any service and hence service tax liability under 'Business Supplies Services' is not viable.

(ix) Plot (L) payment and floor payment requirement and loan premium i.e. one time collection done by the Appellant through its officials at the time of allotment of plots, as per Section 104 of the Finance Act, 1994, inserted vide Finance Act, 2017 is a service tax liable or one time upfront amount (premium, salary, cost, price, development charge or by whatever name called) and the same has been given comprehensive exemption w.e.f. 01.06.2007. Hence, the Appellant is not liable to pay service tax.

(x) Notwithstanding aforesaid as stated in above paras, the appellant being a governmental authority is eligible for exemption w.e.f. 01.07.2012 pursuant to entry No. 39 of nego. Exemption Notification No. 25/2012 ST dated 20.06.2012, which reads as under:

"39. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution."

As per the said exemption entry, any services provided by government authority in relation to any function entrusted to municipality under article 243W of the Constitution are exempted from the levy of service tax. The term 'governmental authority' is defined in clause 2(i) of the notification supra. The Appellant has been established by the Legislature of State of Gujarat under the Gujarat Industrial Development Act, 1962 and performs its functions in accordance with the provisions contained in the Act and the Rules made thereunder. The Appellant qualifies as a governmental authority and performs various functions which are entrusted to a municipality under Article 243W of

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the Constitution and Schedule XII of the Constitution. Thus, it can be said that any activity performed by appellant in relation to the purpose for which, appellant has been established, would qualify for exemption from service tax under entry 35 of the Mega Exemption Notification No. 15/2012-ST dated 23.06.2012 and hence service tax shall not be leviable and called upon Judgement of Bombay High Court passed in case of MIDC reported as 2018 (9) GST 11, 377 (Bom.).

(x) Since the Appellant is not liable to pay Service Tax confirmed in the impugned order, no interest is payable by them under Section 73 of the Act.

(xi) The impugned order has confirmed demand invoking extended period of limitation under Section 78. Larger period of limitation can be invoked only in case where there is fraud, collusion, wilful misstatement, suppression of facts or contravention of provisions of any Excise law with an intent to evade payment of duty. The onus to prove that there was an intent to evade payment of duty is upon the department which has not been discharged. The Appellant was established under the provisions of Gujarat Industrial Act, 1962 for performing statutory functions. The Appellant being a government body could not have a mala fide intention for non-payment of service tax. Reliance is placed on the following judgments:

- (a) CCE v. Bharat Petroleum Corporation Ltd. (2016) 344 ELT 657
- (b) Karnataka State Tourism Dev. Corpn. Ltd. v. CST (2011) 21 STR 51
- (c) Maharashtra State Seed Certification Agency v. CCE/CE (2015) 37 STR 655 (Trib. Mumbai)
- (d) Gujarat Karmada Valley Fertilizers & Chem. Ltd. v. CCE (2015) 37 STR 796 (Trib. Ahmed.)

4. Personal Hearing in the matter was attended by Shri Dewang Gagan, Chartered Accountant and Shri Sagar Makodha, Assistant of the Appellant who reiterated the grounds of appeals and submitted that GIDC has been created by an Act passed by Gujarat State Legislature; that GIDC is a 'Government authority' and hence mega exemption notification applies to it; that the issue has already been decided by the Hon'ble High Court of Mumbai in the case of CCE, Nashik vs MIDC and the case law is applicable. On query as to how MIDC is similar to GIDC in various aspects as decided by the Hon'ble High Court, he submitted that he will make additional submissions within a fortnight.

4.1 The Appellant vide letter dated 17.11.2018 submitted additional submissions as under:

- (i) The Appellant reproduced various provisions of Gujarat Industrial Development Act, 1962 and Maharashtra Industrial Development Act, 1961 and

Sd/-

submitted that objects of the Gujarat Industrial Development Corporation are same as that of the Gujarat Industrial Development Corporation and furnished copies of G.I.D. Act, 1962 dated 19.01.1962.

(i) That the respective provisions of statutory functions as per G.I.D. Act, 1962 and G.I.D. Rules, 1962 and charges collected by G.I.D.C. from plots holders are compulsory in nature and collected as discharge statutory functions in terms of Section 13 of the G.I.D. Act, 1962 and relied upon decision of the Hon'ble Supreme Court in the case of CCE Nasik Vs M/s M.V.D.C. - 2015 (3) 0 S.T.R. 173, 174, 175 and that appellant is not liable to pay service tax on charges collected by G.I.D.

(ii) Relied upon Judgement passed in State XOUS Case (31-18-13) dated 29.09.2016 passed by the Divisional Bench of the Central Excise, Ahmedabad South in their own case who opposed the Service Tax demand for the period post 1.7.2012 by relying upon provisions 39 of the Mega Exemption notification No. 75/2012 dated 20.06.2012, issued by the C.E. as a governmental authority. Also relied upon Order No. 100/15/000/04/17/18 dated 25.10.2016 passed by the Commissioner, GST, Rajkot in their own case.

4.7 The Appellant vide email dated 19.11.2018 submitted copy of Order No. A/12479/2018 dated 30.10.2018 issued by the Hon'ble CESTAT, Ahmedabad in their own case. The Appellant vide email dated 31.1.2019 submitted bifurcation of income booked under income head 'Misc Receipts/Recovery' along with description of each invoice.

**Findings:**

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and written as well as oral submissions made by the Appellant. The issue to be decided is whether the Appellant is liable to pay Service Tax, on various charges/fees collected by them, under the categories of 'Rending of Immovable Property Services' and 'Support Service of Business or Commerce' or not.

6. I find that the Appellant was established under the Gujarat Industrial Development Act, 1962 for the purpose of securing orderly establishment and organization of industries in industrial areas and industrial estates in Gujarat and for establishing commercial areas in connection with the establishment and organization of such industries. Section 13 of the Gujarat Industrial Development

*(Signature)*



Act, 1962 prescribes functions to be performed by the Appellant which reads as under:

- "13. The functions of the Corporation shall be:
- (i) generally to promote and assist in the rapid and orderly establishment, growth and development of industries in the State of Gujarat; and
  - (ii) in particular and without prejudice to the generality of clause (i) to-
    - (a) establish and manage industrial estates at places selected by the State Government;
    - (b) develop industrial areas selected by the State Government for the purpose and to the extent their resources are available for undertakings to establish themselves;
    - (c) develop land on its own account or for the State Government for the purpose of facilitating the location of industries and commercial undertakings;
    - (d) assist financially by loans industries to move their locations into such estates or areas;
    - (e) undertake schemes for providing industrial units and commercial establishments with such services and facilities as may be necessary for their orderly establishment, growth and development;
    - (f) promote, organise, sponsor or undertake schemes or works, either jointly with other corporate bodies or institutions, or with Government or local authorities, or on an agency basis, in furtherance of the purposes for which the Corporation is established and all matters connected therewith."

7. I find that the lower adjudicating authority has confirmed Service Tax demand on the incomes booked by the Appellant under the Heads of Non Agriculture Conversion Charge, Transfer Fee, Infrastructure Upgradation Charge, Plot Full Payment, Administration Charge, Misc allowance, Service Charge, Security Fee, Late Construction Approval, Late Plan Approval, Godown Rent, Lease Rent etc during the period 2011-12 to 2014-15 under the category of 'Renting of Immovable Property Service'. I find that Section 65(96a) of the Act defines 'Renting of Immovable Property' as under:

- "(a) meaning of 'renting of property' includes letting, hiring, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce, but does not include-
- (i) letting of immovable property by a religious body or a religious body; or
  - (ii) letting of immovable property by an educational body imparting skill or knowledge or letters on any subject or field, other than a commercial training or coaching centre."

7.1 I find from the records available that detail descriptions of above mentioned Income Heads are as under:

(i) Non Agriculture Conversion Charge:

The Appellant acquires agricultural land from the State Government and converts into non agricultural purpose in order to develop industrial estate and makes payment of Non Agricultural Conversion charge to the State Revenue department and recovers the same from the plot allottees.

*Sd/-*

- (ii) Transfer Fee: The appellant has not paid Transfer Fee for the purpose of transfer of title to the plot holders. The fee is to be paid by the plot holders.
- (iii) Infrastructure Upgradation Charges:  
 The appellant develops the roads, sewerage, water supply, drainage etc. within the infrastructure. In view of Section 50(1) of UID Act, for any work or service under UID Act, 50% of the contribution is made by the State Government and remaining 50% contribution is made in the ratio of 60:40 i.e. 60% is contributed by the Appellant and 40% is contributed by the local government or other bodies as Infrastructure Upgradation Fund. Post development of the estate, the Appellant recovers total fund contributed by them and Industrial association from the plot holders and members of the fund is respective industrial association. The Appellant has not paying service tax on their 60% contribution w.e.f. 01.07.2002 under category of 'Renting of Immovable Property services' but collected service tax demand on 40% of the contribution transferred to the respective industrial associations.
- (iv) Service charge: The Appellant collect service charges from plot holders for maintenance of Infrastructure facilities like road, streetlights etc.
- (v) Not full payment: In some cases plot holders are line collection done by the Appellant from its owners at the time of allotment of plots.

7.2 I find that the Appellant has obtained the confirmation of demand under the category of 'Renting of services to Property services' on the grounds that the appellant, being a governmental authority, is eligible for exemption w.e.f. 01.7.2012 pursuant to entry no. 39 of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012, which stipulates that the services provided by government authority in relation to any function entrusted to municipally under Article 243W of the Constitution are exempted from the levy of service tax; that the Appellant is covered by the term 'governmental authority' defined under clause 2(i) of the notification supra as the Appellant was established by the Legislature of State of Gujarat under the Gujarat Industrial Development Act, 1962 and performs functions in accordance with the provisions contained in the Act and the Rules made thereunder; that functions performed by them are same as entrusted to a municipality under Article 243W of the Constitution and Schedule III of the Constitution; that they would qualify for exemption from service tax under entry 39 of the Mega Exemption Notification No. 25/2012-ST dated

12/07/2012

12/07/2012

20.6.2012 and relied upon Judgement of Bombay High Court, passed in case of MDC reported as 2018 (9) G.S.T. 1172 (3m. v. )

B. I find that Notification No.25/2012-ST dated 20-06-2012, inter alia, exempts certain services from payment of Service Tax vide S.No.39 of the said notification as under:

"39. Services by a Governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243W of the Constitution."

B.1 I find that the term 'governmental authority' has been defined under Notification No. 25/2012-ST dated 20-06-2012 as under:

"(a) 'governmental authority' means a board, or an authority or any other body established with 50% or more participation by way of equity or control by Government and set up by an Act of Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution."

B.2 The definition of "governmental authority" has been amended w.e.f. 30-01-2014, vide Notification No. 09/2014-ST dated 30-01-2014 as under:

"(a) '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 50% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;"

B.3 I find that the Appellant is a corporation set up by an Act of State Legislature of Government of Gujarat. As per various provisions of the Gujarat Industrial Development Act, 1962, the Government of Gujarat has full control over it. Therefore, there cannot be any doubt that the Appellant is a governmental authority. However, I find that exemption under S.No.39, under Notification No. 25/2012-ST dated 20-06-2012, is available only to the services provided by a governmental authority in relation to any function entrusted to a municipality under Article 243W of the Constitution. The functions entrusted to a Municipality have been prescribed under Twelfth Schedule under Article 243W of the Constitution, which reads as under:

"TWELFTH SCHEDULE (Article 243W)

1. Urban planning, including town planning
2. Regulation of land use and construction of buildings
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation, conservancy and solid waste management
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.

9. State impoundment of land revenue;
10. Loans, advances, allowances;
11. Provision of water supply, sewerage, electricity, roads, drains, playgrounds;
12. Provisions relating to the management of forests;
13. Provisions relating to the management of ports;
14. Banks and financial institutions, including provident funds and other financial institutions;
15. State-owned or controlled corporations;
16. Vital statistics including registration of births and deaths;
17. Public undertakings including postal, telegraph, telephone, telegrams, post office, televisions;
18. Regulation of slaughter houses and dairies.

3.1 It is found from the above facts and evidence submitted to a municipality, that the services of 'Renting of Immovable Property Service' is not covered under Twelfth Schedule under article 243 of the Constitution whereas conversion of agriculture land into non-agriculture and industrial land from one allottee to another allottee is being done by the appellant on behalf of State while performing statutory function as per Sr. No. 2 of 12<sup>th</sup> Schedule. I find that Infrastructure Upgradation Charge being collected for development of infrastructure within industrial zone, is a statutory function in terms of Section 19 of the Gujarat Industrial Development Act, 1962 and is covered by Sr. No. 3 of 12<sup>th</sup> Schedule. The said service charge is levied for maintenance of infrastructure within industrial zone as provided by Sr. No. 4 and 17 of 12<sup>th</sup> Schedule and hence, the Appellant is eligible for exemption from payment of Service Tax on Non Agricultural Conversion Charges, Transfer Fees, Infrastructure Upgradation Charge and Service Charge w.e.f. 1.7.2012. The Appellant has voluntarily paid Service Tax at a concessional rate on 60% contribution made by them w.e.f. 1.7.2010 and has contested Service Tax demand only on 40% of contribution transferred to respective Industrial Associations. They can get benefit only to the extent what has been challenged by them in these proceedings. I, therefore, set aside demand confirmed vide the impugned order on the above charges for the period from 1.7.2012 to March, 2015 and consequent penalties imposed on the App. In view of this regard

9. Regarding Service Tax demand on the income booked under the Head 'Plot full payment' under the category of 'Renting of Immovable Property Service', the Appellant has contended that it is a lease premium collected at the time of allotment of plots and as per Section 104 of the Finance Act, 1994, the Appellant is not liable to pay Service Tax. It is that as per Section 104 of the Finance Act, 1994, inserted vide Finance Act, 32 of 1994, no service tax is leviable on one-time upfront amount (premium, stamp cost, price, development charge or by whatever name called) and the same has been given retrospective exemption w.e.f. 01.06.2007. The provision of Section 104 (b) is reproduced as under:

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"SECTION 104. Special provision for exemption in certain cases relating to long term lease of industrial plots. - (1) Notwithstanding anything contained in section 60, as in force prior to the 1st day of July, 2007, or in section 60B, no service tax leviable on one time upfront amount (premium, admissi. cost, price, development charge or by whatever name called) in respect of taxable service provided or agreed to be provided by a State (to be defined in "State Development Corporation or undertaking to industrial units by way of grant of long term lease of land/lease of more of industrial plots, shall be levied or collected during the period commencing from the 1st day of July, 2007 and ending with the 31st day of September, 2016 (three days + nine months)".

9.6 In view of above provisions, it is held that the Appellant is not liable to pay Service Tax on the income booked under Head 'Rent -UL Payment' during the period 2011-12 to 2014-15 and therefore, set aside confirmation of Service Tax demand and consequent penalties.

10. Regarding service tax demand for the period from April, 2011 to 30.6.2017, the Appellant has contended that it is performing statutory functions as per G.I.D. Act, 1962 and G.I.D. Rules, 1963 and various charges collected by the Appellant from plot holders are compulsory levy which are collected by them to discharge statutory functions in terms of Section 13 of the G.I.D. Act, 1962 and relied upon decision of the Hon'ble Bombay High Court passed in the case of CCE Nashik Vs M/s M.I.D.C.- 2018 (19) G.S.T.L. 572 (Bom.) and pleaded that appellant is not liable to pay service tax.

10.1 The Appellant has relied upon the judgement of the Hon'ble Bombay High Court in the case of Commissioner of Central Excise, Nashik Vs Maharashtra Industrial Development Corporation reported as 2018 (19) G.S.T.L. 572 (Bom.), wherein the Hon'ble High Court has held that,

"10.2 We have already referred to Section 14 of the MIDC Act which provides that the function of the MIDC is not only to develop industrial areas but to establish and manage industrial estates. The role of MIDC is not limited only to establishing industrial estates and allocating the plots or buildings or factory sheds to industrial undertakings. The function and obligation of the MIDC is also to manage and maintain the said industrial estates as provided in Section 14. Therefore, it is no statutory obligation of the MIDC to provide amenities as defined in clause (a) of Section 2 of the MIDC Act to the industrial estates established by it. Hence, it is the statutory obligation of MIDC to provide and maintain amenities in its industrial estates such as roads, water supply, street lighting, drainage, etc. Thus, we find that the services by which the demand was made are part of the statutory functions of the MIDC under MIDC Act. As stated earlier, the demand is in respect of service charges collected from plot holders for providing them water supply lines including maintenance, repair work and repairs. As provided in the circular dated 18th December, 2016, for providing amenities to the plot holders, the water lines or service charges collected by MIDC are absolutely in the nature of compulsory levy which is used by MIDC in discharging statutory obligations under Section 14. We find that even in the Governmenting Act, there is no finding of fact recorded that the service rendered for which Service Tax was sought to be levied was not in the nature of statutory obligation.

*(Signature)*

13. Therefore, we find that the order of the Appellate Authority is substantially correct and we allow the same.

(Emphasis supplied)

10.2 The Hon'ble CESTAT, in its order dated 20.06.2012 (No. 2479/2012 dated 30.10.2012) granted the following directions:

"11. We also examined the order of the High Court and by both the sides and pause the recording of the order in the High Court in the light of the judgment of Hon'ble Supreme High Court in the case of New Asia Industrial Development Corporation Ltd. vs. State of Maharashtra reported at 2018 (2) 1341 ITR 495 and 2017 (1) 173 ITR 509 (CESTAT Mumbai) respectively, and in the case of Chheshinpara Infrastructure Development Corporation Ltd 2016 (6) 1161 ITR 567-568 (1) 173 ITR 509 (CESTAT Mumbai) respectively. In view of the above judgements, there is no exigency to modify the order of the Appellate Authority. Accordingly, the impugned order is set aside with costs of Rs. 10,000/-."

(Emphasis supplied)

10.3 In view of above judgement of the Hon'ble High Court and Order of the CESTAT, I hold that the Appellant is not liable to pay Service Tax on Non Agriculture Conversion Charges, Service Charges and transfer fees during the period from April, 2011 to 30.6.2012. The demand confirmed for payment of Service Tax on 40% of Infrastructure Upgradation Charge is not correct, therefore, set aside. Service Tax demand confirmed for the period from April, 2011 to 30.6.2012 and compound interest imposed with the impugned order, which have been challenged by the Appellant. Needless to say that this Appellate Authority cannot depend on any case which has not been challenged in these appeal proceedings including on the issue of service tax paid by the Appellant on 60% of Infrastructure Upgradation Charge.

11. Regarding confirmation of Service Tax demand on 'Water Charges' Under the category of 'Support Service at business or Commerce', the Appellant has contended that they collected 'Water Charges' for supply of water to the plot holders; that water being goods, Service Tax cannot be levied on supply of water to the plot holders. I find that 'Water Charges' were rendered by the Appellant for supply of water, which is being done by the Appellant on behalf of State while performing statutory functions as at Sl. No. 5 of 12<sup>th</sup> Schedule under Article 243W of the Constitution appearing at Para 2.5 supra. Hence, this service rendered by the Appellant is exempted under Sl.No. 39 of Notification No. 25/2012-ST dated 20-06-2012 and consequently not liable to service tax w.e.f. 01.07.2012 to March, 2015. For the period from April, 2011 to June, 2012 also, the Appellant is not liable to pay service tax in view of judgement rendered by the Hon'ble Bombay High Court in the case of supra. Hence, confirmation of Service

Tax demand on 'Water Charges' is not sustainable. I, therefore, set aside the Service Tax demand of Rs. 17,18,240/- and consequent penalties.

12. Regarding Service Tax demand on the income booked under the Hotels Administration Charges, Misc allowance, Security Fees, Godown Rent, Lease Rent etc during the period 2011-12 to 2014-15. I find that these incomes were generated on account of services rendered by the Appellant which are not in the nature of statutory functions as per 12<sup>th</sup> Schedule under Article 243W of the Constitution as detailed in Para 8.3 of this order and hence, these charges are not covered under the judgement of the Hon'ble High Court. I, therefore, uphold confirmation of Service Tax demand on these incomes. Since, demand is payable, the Appellant is required to pay this demand along with interest, at applicable rates under Section 75 of the Act.

13. Regarding confirmation of demand for short payment of Education Cess and Secondary & Higher Education Cess of Rs. 35,442/- and Interest of Rs. 2,25,142/-, the Appellant has contended that demand has been erroneously confirmed without giving details as to how did these liabilities arise and hence, the same is liable to be set aside. I find that Para 4.3 of the Show Cause Notice has given detailed calculation for short payment of interest of Rs. 2,25,142/- during the period 2011-12 to 2015-16 for delayed payment of service tax of Rs. 30,34,854/- as under:

"1.3 Whereas it appears from the Notices that the Appellant has also short paid the interest on the above mentioned late payment of service tax of Rs. 30,34,854/- (Rs. 2,25,142/-) and interest vide letter No. G.T.D.C./M/33/2007/2103 dated 2.12.15 issued by the Regional Manager, Discom, Guj. They will pay balance interest liability within short period of time. However, they have not paid the remaining interest amount till date and the same is required to be recovered from them. Registration of short payment of interest on delayed payment of Service Tax amount of Rs. 30,34,854/- as under:

Financial Year	Liabs. on differential amount which was not paid (Rs)	Interest amount which was already been paid	Total interest amount to be recovered
2011-12	35,442/-	-	
2012-13	2,51,805/-	-	
2013-14	59,945/-	-	
2014-15	2,32,008/-	-	
2015-16	1,84,181/-	-	
Total	2,55,381/-	5,11,000/-	2,25,142/-

13.1 Further that the appellant has not made any payment of Education Cess and Secondary & Higher Education Cess of Rs. 35,421/- and also given in Para 9 of the Show Cause Notice dated 10/11/2003.

45. Moreover, the appellant has not payment of monthly wise revenue (Growth) provided by the Finance Commission (1970-1976). Bhuvanagar noticed that the said Notice having been signed by the Assessing Officer, the appellant has not paid the said amount of Education Cess and Sec. Tchn. Cess. The same is a liability required to be recovered from them. The details of the said dues are given as follows:

Financial Year	Service Tax Collected per State (Rs.)	Tax on Total State Service Tax (Rs.)	Total Education Cess (Rs.)	Total Secondary & Higher Education Cess (Rs.)
2001-02	46,80,072	1,17,00,180	57,418	35,421

13.2 In view of above, the contention of the appellant is factually incorrect. Therefore, uphold continuation of demand of Education Cess and S.H.E. Cess of Rs. 35,421/- and Interest of Rs. 2,25,749/- to him. These amounts should be paid by the Appellant forthwith.

14. I find that the issues involved in this case are interpretation of law and hence, no penalty is imposed on the Appellant under Section 78 of the Act as per the judgment of the Hon'ble Supreme Court in the case of Shree Rajasthan Syntax Ltd. reported as 2015 (18) GST 623 (SC), wherein it has been held that:

45. Insofar as the question of penalty is concerned, we have given our opinion in the said case and are of the opinion that as per the law, the extended period of limitation as per the proviso of Section 11A(1) of the Central Excise Act, 1944 would be applicable in the given case also.

46. However, where a provision of law is in force at the present time, where the constitutional amendment of unamended Section 4 and the position after the amendment in the said provision with effect from 1/7/2000 was in a final state, it would not be appropriate to apply the said law.

47. In the aforesaid circumstances, the present appeals are allowed in part by sustaining the Commissioner's Order-in-Original passed on 10-5-2003 insofar as it relates to the period from 1-7-2000 to July 2001 but the penalty is set aside. However, this would be subject to costs.

(Emphasis supplied)

14.1 I also rely on Final Order Passed by the Hon'ble CESTAT, New Delhi in the case of Tata Consultancy Services Ltd reported as 2018(18) GSTL 478 (Tn. Del.) duly affirmed by the Hon'ble Supreme Court as reported at 2018(18) GSTL 1727(SC), which held that penalty is not imposable when dispute relates to

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Interpretation of statute. There is no violation of the benefits imposed vide the impugned order.

15. अतिरिक्त प्रमाणों का अतिरिक्त का विचारण करनेका तरीका ही है।

15. The appeal filed by applicant is disposed off as above.

आदेश।



प्रमुख अधिकारी

विद्युत विभाग



(मुद्रा पर संतोष)

प्रधान आयुक्त (अपीलवा)

By S.P.A.B.

To,  
Gujarat Industrial Development Corporation  
GIDC, Vithavaladi,  
Bhavnagar

गति  
मुख्य अधिकारी, विद्युत विभाग  
विद्युत विभाग, विद्युत विभाग,  
विद्युत विभाग

प्रतिनिधि :-

- 1) प्रधान मुख्य आयुक्त, परंतु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात  
एच.एम.ए.ए.ए.ए. के अंतर्गत है।
- 2) आयुक्त, परंतु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, आठवाहा आयुक्तालय,  
भावनगर की अध्यक्षता कर रहे हैं।
- 3) सहायक आयुक्त, परंतु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर के सुबोधन्य,  
भावनगर की अध्यक्षता कर रहे हैं।
- 4) गति पर है।