



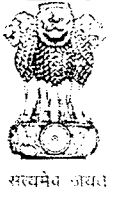
::प्रधानआयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::  
O/O THE PRINCIPAL COMMISSIONER (APPEALS), GST & CENTRAL EXCISE

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

Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com



सत्यमेव जयते

**रजिस्टर्ड डाक ए.डी.द्वारा :-**

क	अपील / फाइल नं./ Appeal / File No.	मूल आदेश नं / O.I.O. No.	दिनांक/ Date
	V2/27/GDM/2018-19	03/Asstt. Commr/2018	28-03-2018

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

**KCH-EXCUS-000-APP-073-2019**

आदेश का दिनांक /

Date of Order:

03.07.2019

जारी करने की तारीख /

Date of issue:

08.07.2019

श्रीकुमार संतोष, प्रधानआयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by ShriKumar Santosh, Principal Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर,  
राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से मुजित: /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellant & Respondent :-

**M/s Pokar Vadilal Parbat, Kothara Road, Village Kanakpar, Taluka-Abdasa, Dist. Kutch.**

इस आदेश (अपील) में व्याप्त कोई ब्याक निम्नलिखित तरीके में उपयुक्त प्राधिकारों / प्राधिकरणों 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) मामा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 का धारा 35B के अन्तर्गत एवं विनियम, 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) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को 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.

(ii) उपरोक्त परिच्छेद 1(a) में ब्रताए गए अपीलों के अलावा शेष सभी अपीलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, बहामली भवन असावा अहमदाबाद- 380016 को जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपील न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अन्तर्गत 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 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 उम शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टैंड ऑर्डर) के लिए आवदन-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) अपील न्यायाधिकरण के समक्ष अपील, विनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र 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 (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 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 उम शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टैंड ऑर्डर) के लिए आवदन-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) विन अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं इसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उन्में से एक प्रति प्रमाणित होती चाहिये) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने या 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) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेन्टेनल) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की विन 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%), जमा मांग एवं जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, वशते कि इस धारा के अंतर्गत उभा कि जान कानी अपेक्षित देय राशि इस करोड़ रुपय: मे 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) मेनवेट जमा की ली गई गलत राशि  
(iii) मेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम  
- वशते यह कि इस धारा के प्रावधान विनियम (नं० 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होंगे। / 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 कोपनरीक्षण आवेदन :  
**Revision application to Government of India:**  
इस आदेश की पुनरीक्षणयाचना निम्नलिखित मामला में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरन्तुक के अंतर्गत अवर मन्त्रि, भारत सरकार, पुनरीक्षण आवेदन इकाई, विन मंत्रालय, मन्त्रालय विभाग, चौथी मंजिल, जीवन दीप भवन, ममद मार्ग, नई दिल्ली-110001, को किया जाता चाहिये। / 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 में भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह में 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 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 माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.  
(iv) मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा विन अधिनियम (नं० 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयाविधि 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 केन्द्रीय उत्पादन शुल्क (अपील)नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रपण के 3 माह के अंतर्गत की जानी चाहिये। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिये। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के माध्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिये। / 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 चाहिये।  
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, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की निम्न पट्टी कार्य में वचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को 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.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.  
(E) यथामंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिये। / 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, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और 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](http://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](http://www.cbec.gov.in).



ORDER-IN-APPEAL

M/s. Pokar Vadilal Parbat, Kothara Road, Village- Kanakpur, Taluka- Abdasa District – Kachohh holding service tax registration No. ABNPP0718QSD001 (hereinafter referred to as 'Appellant') filed present appeal against Order-in-Original No. 03/Asstt.Commr./2018 dated 28.3.2018 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Central GST Division-1, Bhuj (hereinafter referred to as 'the lower adjudicating authority').

2. The brief facts of the case are that the appellant had taken registration engaged in providing services under the category of "Works Contract Service" under "Erection, Commission and Installation Service"; that investigation conducted by DGCEI, Ahmedabad revealed that appellant had short paid service tax of Rs.12,19,901/- during the period from April, 2011 to March,2015. Show Cause Notice dated 14.10.2016 was issued to the Appellant demanding service tax of Rs.12,19,901/- under proviso to Section 73(1) of the Finance Act 1994 (hereinafter referred to "the Act"), interest under Section 75 of the Act, proposing appropriation of service tax of Rs.6,25,692/- paid by them and imposition of penalty under Section 77 and Section 78 of the Act.

3. The lower adjudicating authority vide the impugned order confirmed demand of Rs.2,41,033/- on Works Contract under proviso to Section 73 (1) of the Act along with interest under Section 75 of the Act, Rs.1,78,444/- and Rs.39,243/- under Section 73(1), also appropriated Rs.6,25,692/-under Section 73A(2), of the Act already paid by the appellant, imposed penalty of Rs.5,886/- for demand of Rs.39,243/-under proviso (i) to Section 78 of the Act and also Penalty of Rs 2,01,790/- for demand of Rs.2,01,790/- under Section 78 of the Act.

4. Being aggrieved by the impugned order, the appellant preferred the present appeal on the following grounds:

(i) Water and Sanitation Management Organization (hereinafter referred to as "WASMO" was established by the Government of Gujarat for working towards drinking water security and habitat improvement by empowering communities to manage their local water resources and village water supply systems and services; that WASMO executed various project related to Drinking water and sanitation for the benefit of general public; that WASMO



had executed such water supply project across kutch district with public partnership model; that projects executed by WASMO were exclusively funded by the Government of Gujarat; that services provided to WASMO are not subjected to service tax even prior to insertion of Notification 25/2012 dated 1.7.2012 and hence, they are not liable to pay service tax of Rs.1,04,981/- in respect of services provided to WASMO prior to 1.7.2012 though confirmed vide the impugned order.

(ii) The lower adjudicating authority allowed the exemption under Notification 25/2012-ST dated 20.6.2012 and under Reverse Charge mechanism under Notification 30/2012-ST dated 20.6.2012 reducing the total demand to Rs.25,346/- which included Rs.1,04,981/- pertaining to services provided to WASMO which is exempted and hence, no service tax is payable by them.

(ii) Since no service tax is payable, order for payment of interest and penalty imposed is required to be set aside.

5. Personal hearing in the matter was attended by the appellant Shri Vadlal Pokar himself who reiterated the grounds of appeal; that he is unemployed Civil Engineer and working as Farmer since 2014 at his Village Kankpar; that appeal may be allowed in view of grounds of appeal.

### FINDINGS

6. I have carefully gone through the facts of the case, the impugned order, the grounds of Appeal and submissions made by the Appellant during personal hearing. The issue to be decided in the present appeal is as to whether the impugned order, in the facts of the case, is correct, legal and proper in confirming demand, interest and imposing penalty including for the services provided by appellant to WASMO prior to 1.7.2012 or not?

7. The appellant has contested confirmation of demand of Rs.1,04,981/- for the services provided to WASMO prior to 1.7.2012, which has been denied vide Para 5.15 of the impugned order, holding that no service tax is payable w.e.f. 1.7.2012 as per Notification No. 25/2012-ST dated 20.6.2012, however, benefit of Notification 9/2016-ST dated 21.3.2016 is not applicable to the services provided to WASMO prior to 1.7.2012 whereas, appellant's contention is that the



services provided by them to WASMO are exempted even prior to 1.7.2012.

7.1 I find that the lower adjudicating authority, at Para 5.5 read with entries in respect of "WASMO" at Table 2 appended to Para 5.15 of the impugned order, has recorded that the appellant had provided 'works contract' services to WASMO in respect of construction of pipeline, conduit and plant for water supply, sewerage treatment etc. I find that the taxable category of works contract service has been defined under Section 65(105) (zzzza) as under:-

*"(zzzza) to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.*

*Explanation. - For the purposes of this sub-clause, "works contract" means a contract wherein, -*

*(i) Transfer of property in goods involved in the execution of such contract is liable to tax as sale of goods, and*

*(ii) Such contract is for the purposes of carrying out, -*

*(a) Erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or*

*(b) Construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or*

*(c) Construction of a new residential complex or a part thereof; or*

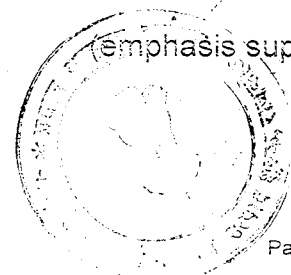
*(d) Completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or*

*(e) Turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;"*

7.2 I find that as per explanation at clause (ii)(b) above, "works contract" service includes construction of civil structure or of a pipeline or conduit primarily for the purpose of commerce and industry whereas the lower adjudicating authority has not disputed that the services provided to WASMO, a governmental agency, are not for the purpose of commerce and industry as held in Para 5.5 of the impugned order, which reads as under:-

"5.5 I observe that the services of the assessee can be said to have been provided to WASMO by way of construction of pipeline, or conduit, or plant for either (i) water supply, or (ii) water treatment, or (iii) sewerage treatment, or (iv) disposal; and/ or else, by way of construction of a civil structure meant predominantly for use other than for commerce, industry, or any other business or profession,....."

(emphasis supplied)



7.3 I also find that the laying of pipeline work under "works contract" provided by the Appellant was for the purpose of providing water supply, water treatment and sewerage treatment by the local authority agency for benefit of general public and not for commercial or industrial purpose. Thus, the services provided by the Appellant is not for commercial or industrial purpose, excluded from the definition of works contract service under Section 66(1)(zzzza). Therefore, the services provided by the appellant are not taxable and the appellant is not liable to pay service tax on the services provided by it even prior to 1.7.2012.

8. I find that Hon'ble Madras High Court in the case of M/s. Indian Hum Pipes Company Ltd reported as 2015-16, 214 (Mad) has held that laying of pipes for water supply to state water supply and drainage board is activity in the public interest and hence, no service tax is payable.

"As rightly pointed out by the Tribunal, the assessee was entrusted with the task of laying pipeline to enable the Tamil Nadu Water Supply and Drainage Board to supply water. It was an activity in public interest to take care of the public amenities liable to be provided by the State. Therefore, the Tribunal was right in holding in favour of the assessee. Hence, the question of law is answered in favour of the assessee"

(emphasis supplied)

8.1 I find that Hon'ble CESTAT in the case of M/s. Shonan Sidhart (J.V.) has also held that the work of laying of pipeline to M/s. Vidarbha Irrigation development Corporation is covered under works contract and not taxable. Relevant part of the order reads as under:-

"4. On consideration of the submissions made by both sides and perusal of records, we find that the work executed by the appellant by a contract entered with M/s. Vidarbha Irrigation Development Corporation, Nagpur for providing and laying of steel/fabricated M.S. Pipe line for raising main and its accessories like construction of manifold, pumping machinery, switch yard and cable work for electric supply (from M.S. E.B. point on/yards) including all related civil, mechanical and electrical works as per design and drawing, commissioning, testing of the entire pipe line and pumping machinery including maintenance for two years after completion of the contract. It can be noticed from the description of the work awarded to the appellant, it is a contract turnkey project which results in an erected structure with installation of pumping machinery, electrical switch yard and other related civil, mechanical and electrical structures. In our considered view would get covered under head "Commercial and industrial Construction Services". This specific issue was before the Larger Bench of the Tribunal in the case of Lanco Infratech Ltd. (supra), wherein the Larger Bench has settled that the law and held that irrigation projects of irrigation projects would get covered under CICS prior to January, 2007 but eligible for exemption. We also find strong force in the contention of the appellant that the issue is now covered under Hon'ble Supreme Court in the case of Larsen & Toubro Ltd. (supra), in the said case the Hon'ble Apex Court was considering the same issue of vis-a-vis contract for taxability under different categories. Considering the law laid down in Paragraph 24 held as under :-



"24. A close look at the Finance Act, 1994 would show that the five taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contracts. This is clear from the very language of Section 65(105) which defines "taxable service" as "any service provided". All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them, such as for example, a service contract which is a commissioning and installation, or erection, commissioning and installation contract. Further, under Section 67, as has been pointed out above, the value of a taxable service is the gross amount charged by the service provider for such service rendered by him. This would unmistakably show that what is referred to in the charging provision is the taxation of service contracts simpliciter and not composite works contracts, such as are contained on the facts of the present cases. It will also be noticed that no attempt to remove the non-service elements from the composite works contracts has been made by any of the aforesaid Sections by deducting from the gross value of the works contract the value of property in goods transferred in the execution of a works contract."

It is undisputed in the case in hand, contract entered by the appellant is a works contract/turnkey project to be handed over M/s. Vidarbha Irrigation Development Corporation, Nagpur. As the issue is squarely covered by the judgment of Hon'ble Apex Court, we hold that the impugned order is unsustainable."

8.2 In the case of M/s. Jyoti Buildtech(P) Ltd reported as 2017 (3) GSTL 116 (Tri-All), the Hon'ble CESTAT has held that Works Contract services provided in respect of laying of pipe for water supply, construction of sewerage pumping station, water treatment plants falls under explanation (ii) (b) of Section 65(105)(zzzza) and not taxable. Para 5 of the order reads as under:-

"5. Having considered the rival contentions, we are satisfied that the issue now stands settled by the Larger Bench of this Tribunal in M/s. Lanco Infratech Ltd. (supra) and also confirmed by order of the Hon'ble Madras High Court (supra) in Indian Hume Pipes Ltd. wherein it has been held that such works executed by the appellant in the nature of sewerage works, laying of pipe and for water supply falling under Explanation (ii)(b) fall under the definition of "works contract service" and were also exempted under the classification commercial and industrial construction service prior to 1-6-2007, as explained by the Larger Bench. Further, we find that the issue is wholly interpretational and thus the longer period of limitation is not invocable under the facts and circumstances. Accordingly, we allow the appeal setting aside the impugned order, except the demand for normal period, if any, in the case of erection of service station for the gross amount of Rs. 3,25,200/- for labour/charges. The appellant will be entitled to consequential benefits in accordance with law."

8.3 In view of above discussion, I hold that the services provided by the appellant to WASMO are not taxable even prior to 1.7.2012 and demand of Rs.1,04,981/- confirmed in the impugned order is required to be set aside. I, therefore, set aside the demand of Rs.1,04,981/-.



9. As regards demand of Rs. 2,01,790/- under section 78 of the Act, I find that all SCNs to be decided under section 78 of the Act is applicable, which reads as follows:-

*"(1) Where any service tax has been levied or paid, or has been short-levied or short-paid, or has not been levied, by reason of fraud or collusion or willful mis-statement or suppression of facts or contravention of any of the provisions of the Act or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the provisions of section (1) of section 73 shall, in addition to the service tax specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax.*

Provided that in respect of the cases where the details relating to such transactions are recorded in specified records for the period beginning with the 8th April 2012 (including the day in which the Finance Bill, 2012 receives the assent of the President, both days inclusive), the penalty shall be fifty per cent. of the amount so determined :

Provided further that where service tax and interest is paid within a period of thirty days of --

(i) the date of service of notice under the proviso to sub-section (1) of section 73, the penalty payable shall be fifteen per cent. of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be abated;

(ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be thirty per cent. of the service tax so determined :

Provided also that the amount of reduced penalty under the second proviso shall be available only to the extent of such reduced penalty is also paid within such period.

Explanation. -- For the purposes of this sub-section, "specified records" means records including computerised data as are required to be maintained by the assessee in accordance with any law for the time being in force or where there is no such requirement, the books and records maintained by the assessee in the books of accounts shall be deemed to be the specified records.

9.1 I further find that confirmed demand in the impugned order has been split into two parts i.e. Rs.39,248/- (paid by appellant along with interest of Rs.6,754/-) and Rs.2,01,790/- (Rs.1,73,441/- paid by appellant). Since, demand of Rs.39,248/- has been paid along with interest, and has not been disputed by the Appellant in this appeal, demand of Rs.2,01,790/- shall get reduced to Rs.93,809/- after reduction of Rs.1,04,981/- held not payable by the Appellant in Para 8.3 above.

9.2 I find from Table-2 appended to Para 5.15 of the impugned order that demand of Rs.93,809/- is relating to the transactions recorded in the books of accounts of the appellant from 10.5.2011 to 22.2.2012 and hence, penalty is not imposable beyond @50% of service tax determined as per 1<sup>st</sup> proviso of Section



78 of the Act. However, it is also a fact that the appellant has paid Rs.1,76,444/- on 20.09.2016 (i.e. before issuance of the show cause notice dated 14.10.2016) for demand now reduced to Rs.96,809/- only. Therefore, the appellant is eligible for further reduced penalty @25% as per second proviso to Section 78 of the Act as Rs.79,635/-(Rs.1,76,444 - Rs.96,809/-) paid required to be treated to have been paid by the appellant towards interest and penalty .

10. Accordingly, I set aside demand of Rs.1,04,981/- and modify penalty as above and allow appeal to this extent.

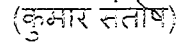
११. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

11. The appeal filed by the Appellant is disposed off in above terms.

सत्यापित,



विपुल शाह  
अधीक्षक (अपील्स)

  
(कुमार सतीश)

प्रधान आयुक्त(अपील्स)

पंजीकृत डाक द्वारा

प्रति

M/s. Pokar Vadilal Parbat, Kothara Road, Village- Kanakpur, Taluka- Abdasa District – Kachchh	मेसर्स पोकर वाडीलाल परबत कोठारा रोड, गाँव - कनकपुर तालुका अबडासा जिल्ला - कच्छ
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प्रतिलिपि:

- १ प्रधान मुख्य आयुक्त, केन्द्रीय वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- २ आयुक्त, केन्द्रीय वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, कच्छ (गांधीधाम) आयुक्तालय, गांधीधाम को आवश्यक कार्यवाही हेतु ।
- ३ सहायक आयुक्त, केन्द्रीय वस्तु एवं सेवा कर, भुज मण्डल, भुज को आगे आवश्यक कार्यवाही हेतु।
- ✓ ४ गार्ड फाइल ।

