



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

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

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/274/RAJ/2017	65/ST/2016	29.03.2017

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

RAJ-EXCUS-000-APP-036-2018-19

आदेश का दिनांक / Date of Order:	18.04.2018	जारी करने की तारीख / Date of issue:	24.04.2018
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कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

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

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

1. M/s. R. V. Movaliya Construction Co., S/14, Municipal Shopping Centre Mavdi Main Road Rajkot ,

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

(A) सीमा शुल्क केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए। /

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 360016 को की जानी चाहिए। /

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

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

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

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

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a 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) वित्त 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 उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं 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 को पुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:
(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। / जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। / The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पदों कार्य से बचने 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) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended.
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in

::ORDER IN APPEAL ::

M/s. R.V. Movaliya Construction Co., S/14, Municipal Shopping Centre, Mavdi Main Road, Rajkot (hereinafter referred to as "Appellant") filed present appeal against Order-In-Original No. 65/ST/2016 dated 29.03.2017 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central Excise Division, Morbi (hereinafter referred to as "the lower adjudicating authority"): -

2. The brief facts of the case are that based upon third party data received from then CBEC, inquiry was initiated against appellant which revealed that appellant had provided 'Erection, Commissioning and Installation Service', 'Commercial and Industrial Construction Service', and 'Works Contract Service' to various customers including Paschim Gujarat Vij Company Limited (hereinafter referred to as "PGVCL") and Dakhin Gujarat Vij Company Limited (hereinafter referred to as "DGVCL") during FY 2011-12 to FY 2014-15 and it was alleged that they had short-paid service tax of Rs. 21,24,796/-. Show Cause Notice No.V.ST/AR-II/STAX-RJT/ADC/BKS/28/2016-17 dated 02.05.2016 (hereinafter referred to as "SCN") was issued to appellant demanding service tax of Rs. 21,24,796/- under proviso to Section 73(1) of the Finance Act, 1994 (hereinafter referred to as "the Act") along with interest under Section 75 of the Act and proposing to impose penalty on the appellant under Section 76, 77 & 78 of the Act. The lower adjudicating authority vide impugned order confirmed demand of service tax of Rs. 21,24,796/- along with interest and imposed penalty of Rs. 21,24,796/- under Section 78 of the Act with option to pay reduced penalty and also imposed penalty of Rs. 10,000/- each under Section 77(1)(a) and Section 77(2) of the Act but did not impose penalty under Section 76 of the Act.

[Handwritten signature]

3. Being aggrieved with the impugned order, appellant preferred present appeal, *inter-alia*, on the following grounds:-

(i) During FY 2011-12, appellant had provided various services of Rs.

3,72,702/- to H.P. Patel Construction Co., Royal Builders and individual customers for construction of single residential units; that service provided to H.P. Patel Construction Co. of Rs. 9,44,376/- was below exemption limit of Rs. 10 lakhs; that service of construction of road and bridge of Rs. 8,61,616/- provided to Royal Builders was exempt from service tax as service recipient was R&B Department, Government of Gujarat; that service of Rs. 25,65,950/- was in the form of construction of single residential unit to individual customers, which was exempted as per Sr.No. 14(b) of Notification No. 5/2012-ST, thus, total taxable turnover for FY 2011-12 was Rs. 9,44,376/- (below Rs. 10 lakh) and appellant was/is not liable to pay any service tax during the year.

i) During FY 2012-13, appellant had provided various services of Rs. 2,38,784/- to H.P. Patel Construction Co., Royal Builders, Kunal Structure India Pvt. Ltd., Rajkot Irrigation Division, Tacon Infrastructure Pvt. Ltd. and individual customers for construction of single residential unit; that for services of Rs. 9,60,532/- provided to H.P. Patel Construction Co., appellant had paid service tax of Rs. 38,223/- vide Challans dated 25.07.2014 and dated 26.12.2012 and appellant is willing to pay service tax on remaining amount; that services of Rs. 20,06,060/- towards construction of underground drainage and minor bridge provided to Kunal Structure India Pvt. Ltd. and service of Rs. 11,14,963/- towards road widening and strengthening to Tacon Infrastructure Pvt. Ltd. were exempt from service tax; that exempted services of Rs. 8,32,151/- and Rs. 80,808/- were provided to Rajkot Irrigation Division and Royal Builders respectively; that service of Rs. 12,44,270/- received towards construction of single residential unit of individual customers which was exempted in terms of Sr.No. 14(b) of Notification No. 25/2012-ST; thus, total taxable turnover for FY 2012-13 was Rs. 9,60,532/- which was below Rs. 10 lakhs but considering future business expansion, appellant had voluntarily paid service tax and appellant is ready to pay service tax on Rs. 13,063/- for the year.

ii) During FY 2013-14, appellant had provided services of Rs. 46,27,429/-

to H.P. Patel Construction Co., Kunal Structure India Pvt. Ltd., Rajkot Irrigation Division, A.A. Patel, DGVCL and PGVCL; that service tax of Rs. 72,637/- was paid by them vide challans dated 21.05.2014 and dated 15.07.2015 for the services provided to H.P. Patel Construction Co.; that services of Rs. 1,90,111/- of construction of underground drainage and minor bridge provided to Kunal Structure India Pvt. Ltd. were exempted service, however, by mistake appellant had paid service tax of Rs. 8,163/- vide challans dated 21.05.2014 and dated 15.07.2015; that service of Rs. 2,95,356/- provided to Rajkot Irrigation Division was also exempted from service tax; that service tax of Rs. 15,574/- paid on service of Rs. 3,15,000/- provided to A.A. Patel vide challans dated 21.05.2014 and dated 15.07.2015; that services provided to DGVCL of Rs. 9,76,311/- and to PGVCL of Rs. 13,81,450/- were exempted from service tax in terms of Notification No. 2/2014-ST dated 30.01.2014.

(iv) During FY 2014-15, appellant had provided services of Rs. 92,27,746/- to DGVCL and PGVCL; that services of Rs. 82,12,291/- provided to DGVCL, appellant had paid service tax of Rs. 28,795/- vide challan No. 635 dated 15.07.2015 on taxable value of Rs. 9,54,355/-; that service of Rs. 10,15,455/- provided to PGVCL on which service tax of Rs. 6,586/- was paid vide challan No. 635 dated 15.07.2015 on taxable value of Rs. 1,33,206/- though services provided to DGVCL and PGVCL are exempt from service tax.

(v) Notwithstanding above submissions, appellant submitted that benefit of cum-tax price as per Section 67(2) of the Act may be granted to them as held in following case-laws:-

- Attitude Training & Development India (Pvt.) Ltd. – 2010 (19) STR 48 (Tri. - Chennai)
- Joe Transport – 2010 (18) STR 646 (Tri. – Chennai)
- Andhra Bank – 2010 (18) STR 475 (Tri. – Bang.)
- PKN Bus Service – 2010 (18) STR 424 (Tri. – Chennai)
- Future Focus Infotech India Pvt. Ltd. – 2010 (18) STR 308 (Tri. Chennai)

- V. Sriram & Co. – 2010 (18) STR 213 (Tri. – Chennai)
- Safe Test Enterprise – 2010 (18) STR 172 (Tri. Chennai)
- Planners India Pvt. Ltd. – 2006 (4) STR 206 (Tri. – Del.)

(i) Appellant obtained service tax registration on 28.02.2012 and taxable turnover for FY 2011-12 was below Rs. 10 lakh and appellant was not liable to pay any service tax for the year. Though there was slight delay in taking registration, there was no financial loss to the department. Therefore, penalty imposed for delay in taking service tax registration may be waived considering the fact of the case and bonafide intention of the appellant.

The Assistant Commissioner, Central GST Division-I, Rajkot vide letter No. IV/15-173/ST/REC/16-17 dated 09.01.2018 submitted comments on the Grounds of Appeal filed by appellant stating that PGVCL and DGVCL are electric companies incorporated during 2003 by Gujarat Electricity Board as a part of the efforts towards restructuring of power sector and were created with a mandate to run as a Commercial Organization. Hence, both these companies are not to be considered as Government or Government authority and any exemption on that count cannot be extended to the appellant. Further, the appellant had also provided their services in the capacity of subcontractors, who were not the Government Department. Therefore, the exemption claimed by the appellant does not stand. Prior to 01.07.2012, the services which were specified in clause (105) of Section 65 of the Act were taxed under Section 66 of the Act, however, w.e.f. 01.07.2012, after introduction of Section 66B of the Act, all services, other than the services specified under negative list under Section 66D of the Act or exempted otherwise, became taxable services. The services provided by appellant did not fall under negative list of services and were also not exempted, therefore, the services provided by the appellant would attract service tax under Section 66B of the Act. Further, the year-wise exemption on the services provided by the appellant towards widening of road civil work, construction of Government road, Drainage work, etc. have already been extended to the appellant. As per definition of Government authority under Notification No. 25/2012-ST

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dated 20.06.2012, 'Government authority' means a Board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or State Legislature to carry out any function entrusted to a Municipal under Article 243W of the Constitution. PGVCL and DGVCL have been set up under the Companies Act and hence contention of the appellant that the services provided by them to PGVCL and DGVCL are exempted under the exemption notification No. 25/2012-ST dated 20.06.2012 is not correct and not acceptable. The details of services provided by the appellant were detected on the basis of investigation made by the department and it is clear that appellant failed to make payment of service tax and violated provisions of the Act and the Rules framed thereunder. Hence, penalty imposed on them under Section 77(2) and Section 78 of the Act is correct. There are catena of judgments, wherein it has been held that in case of non-payment of duties/taxes with intent to evade the same, penalty is imposable.

5. Shri Pragnesh B. Hirpara, Advocate, on behalf of appellant, vide his letter dated 17.01.2018, waived personal hearing and requested to decide the case on merit. No one from department appeared for personal hearing, though P.H. Notices were issued to the Commissionerate.

FINDINGS: -



6. I have carefully gone through the facts of the case, the impugned order and submissions of the appellant in their appeal memorandum. The issue to be decided is whether the impugned order, in the facts of this case, confirming demand of service tax and imposing penalty of Rs. 21,24,796/- on the appellant is correct or not.

7. I find that the impugned SCN had been issued to appellant under which demand of service tax of Rs. 21,24,796/- was made for 'Erection, Commissioning and Installation Service', 'Commercial and Industrial Construction Service', and 'Works Contract Service' provided to various customers including PGVCL and DGVCL for the FY 2011-12 to 2014-15 as

er service tax calculation under Annexure-A to the impugned SCN. I find that for the year 2011-12, service tax has been demanded on value of Rs. 1,44,736/- earned by appellant towards providing Commercial or Industrial Construction Service and Rs. 25,65,950/- towards repairing work. The appellant has contended that they earned income of Rs. 25,65,950/- towards repairing of single residential units of individual customers but did not submit any evidences to this effect. In absence of evidence produced by the appellant, I have no option but to reject appeal in respect of F.Y. 2011-12 and confirm demand along with interest under Section 75 of the Act.

.1 I find that for the year 2012-13, service tax has been demanded on value of Rs. 9,60,437/- earned by appellant towards laying of GSPC Gas line and Rs. 12,44,365/- towards carrying out Misc. Construction/repairing work. The appellant has again contended that they earned income of Rs. 2,44,365/- towards repairing of single residential units of individual customers but did not submit any evidences whatsoever in this regard. Therefore, demand confirmed by the lower adjudicating authority is correct, legal and proper and I uphold the demand for F.Y 2012-13 along with interest under Section 75 of the Act.

.2 In respect of service tax demanded on the services provided by appellant during FY 2013-14 and FY 2014-15, I find that appellant has contended that they have provided Erection, Commissioning and Installation service to PGVCL and DGVCL whereas service tax is exempted to the services provided to PGVCL and DGVCL under Notification No. 25/2012-ST dated 20.06.2012 as service receivers are Government Authority. I find that exemption to all services for transmission of electricity provided vide Notification No. 11/2010-ST dated 27.02.2010 was withdrawn vide Notification No. 34/2012-ST dated 20.06.2012. I further find that Sr.No. 12 of Notification No. 25/2012-ST dated 20.06.2012 did not provide any exemption in the services provided for transmission and distribution of electricity w.e.f. 1.07.2012 even though it exempted service tax on various services provided to Government authorities, as under: -

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

(a) *a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;*

(b) *a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);*

(c) *a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;*

(d) *canal, dam or other irrigation works;*

(e) *pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or*

(f) *a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act;*

7.3 The appellant had provided Erection, Commissioning and Installation service of HT/LT Line which is not covered under clause (a) to (f) of Sr.No. 12 to Notification No. 25/2012-ST dated 20.06.2012. I further find that PGVCL and DGVCL are the companies incorporated under Companies Act and conducting commercial activities and therefore, both these companies cannot be considered as Government authority during the period from 01.07.2012 onwards in terms of definition of 'Government Authority' provided under Para 2(s) of the said Notification, which reads as under: -

"governmental authority" means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution.

7.4 In view of above, I find that benefit of exemption from payment of service tax as contended by the appellant is not admissible to them. Hence, I

uphold demand of service tax of Rs. 15,28,904/- also for the years 2013-14 and 2014-15 along with consequential interest under Section 75 of the Act.

As regards, cum-tax benefit, it is an admitted fact that the appellant did not charge and have not collected any amount towards service tax separately, hence consideration is not inclusive of service tax. Since no service tax has been charged and collected from the customers cum tax value benefit can't be extended to the appellant applying the ratio of the judgment passed by the Hon'ble Supreme Court in the case of Amrit Agro Industries reported as 2007 (210) E. L. T. 183 (SC) since ratio of the judgment has to be applied in service tax matters also. Para 14 of the said judgment is reproduced as under:

"14. In our view, the above judgments in the case of Maruti Udyog Ltd. and Srichakra Tyres Ltd. have no application in the facts of the present case. In the case of Asstt. Collector of Central Excise v. Bata India Ltd. reported in 1996 (84) E.L.T. 164 this Court held that under section 4(4)(d)(ii) of Central Excises and Salt Act, 1994 the normal wholesale price is the cum-duty price which the wholesaler has to pay to the manufacturer-assessee. The cost of production, estimated profit and taxes on manufacture and sale of goods are usually included in the wholesale price. Because the wholesale price is usually the cum-duty price, the above section 4(4)(d)(ii) lays down that the "value" will not include duty of excise, sales tax and other taxes, if any, payable on the goods. It was further held that if, however, a manufacturer includes in the wholesale price any amount by way of tax, even when no such tax is payable, then he is really including something in the price which is not payable as duty. He is really increasing the profit element in another guise and in such a case there cannot be any question of deduction of duty from the wholesale price because as a matter of fact, no duty has actually been included in the wholesale price. It was further held that the manufacturer has to calculate the value on which the duty would be payable and it is on that value and not the cum-duty price that the duty of excise is paid. Therefore, unless it is shown by the manufacturer that the price of the goods includes excise duty payable by him, no question of exclusion of duty element from the price for determination of value under section 4(4)(d)(ii) will arise."

(Emphasis supplied)

Regarding imposition of penalty of Rs. 10,000/- for not obtaining service tax registration imposed under Section 77(1)(a) of the Act, I find that appellant

has obtained service tax registration on 28.02.2012, whereas they were liable to service tax in 2011-12 and therefore penalty under Section 77(1)(a) of the Act is not imposable and I find that penalty of Rs. 10,000/- has been correctly imposed. It is on record that the appellant failed to assess their service tax liability properly and have not paid service tax payable by them, they are liable to penalty under Section 77(2) of the Act and I uphold the same.

10. Regarding penalty imposed under Section 78, I find that appellant has suppressed the fact that they had provided taxable services from 2011-12 to 2014-15 and has also not paid service tax at the material time and facts come to knowledge of the department only after enquiry was initiated against the appellant and therefore, I uphold penalty equal to demand confirmed under Section 78 of the Act.

11. In view of the above factual and legal position, I uphold the impugned order and reject appeal, as detailed above.

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

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

28/02/12
22/12/12

(Handwritten Signature)
18/11/2018
(कुमार संतोष)
आयुक्त (अपील्स)

By RPAD

To,

M/s. R.V. Movaliya Construction Co., S/14, Municipal Shopping Centre, Mavdi Main Road, Rajkot	मे. आर.वी. मोवालिया कन्स्ट्रक्शन कंपनी, एस/१४, म्यूनिसिपल शॉपिंग सेंटर, मवड़ी मैन रोड, राजकोट
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Copy for information and necessary action to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone Ahmedabad for his kind information.
- 2) The Commissioner, GST & Central Excise, Rajkot Commissionerate, Rajkot.
- 3) The Assistant Commissioner, GST & Central Excise Division-I, Rajkot.
- 4) Guard File.