



::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 / 2<sup>nd</sup> Floor, GST Bhavan.

रेस कोर्स रिंग रोड, / Race Course Ring Road.

राजकोट / Rajkot - 360 001

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रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/261 /RAJ/2017	DC/JAM/ST/53/2016-17	25.05.2017

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

**RAJ-EXCUS-000-APP-108-2018-19**

आदेश का दिनांक / Date of Order:	<b>30.05.2018</b>	जारी करने की तारीख / Date of issue:	<b>01.06.2018</b>
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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 :-**

**M/s. Mahalaxmi Electricals, 1st Floor Rajavir Complex S.T. Road Jamnagar 361 005 .**

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 उत्पाद 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.

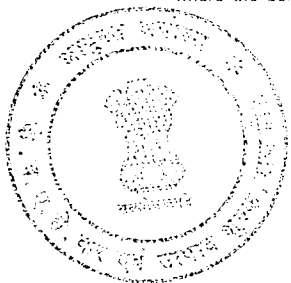
(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, , द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /  
To the West regional bench of Customs, Excise & Service Tax 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) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 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। स्थान 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 नियमावली, 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। स्थान 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 is Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित पत्र S.T.-7 में की जा सकेंगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रामाणिक 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 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 (सेस्टेट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो कि 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 भाग के 10 प्रतिशत (10%), जब भाग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दरा कराई रूप से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मात्र किए गए शुल्क" में निम्न शामिल है  
(i) धारा 11 डी के अंतर्गत रकम  
(ii) सेनवेट जमा की ती गई गलत राशि  
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम  
- बशर्त यह कि इस धारा के प्रावधान विस्तार (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान पर अपील को लागू नहीं होगा।  
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.  
Under Central Excise and Service Tax, "Duty Demanded" shall include :  
(i) amount determined under Section 11 D;  
(ii) amount of erroneous Cenvat Credit taken.  
(iii) amount payable under Rule 6 of the Cenvat Credit Rules  
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :  
Revision application to Government of India:  
इस आदेश की पुनरीक्षण राशिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परतक 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 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) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इयूटी केडीए इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समाविधि 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 कि केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट हैं, इस आदेश के संश्लेषण 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, उपरोक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा पट्टी 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 Appellate 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-I in terms of the Court Fee Act,1975, as amended.  
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कक्ष विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को संश्लेषित 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](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. Mahalxmi Electricals, First Floor, Rajavir Complex, ST Road, Jamnagar 361005 (hereinafter referred to as "Appellant") filed present appeal against Order-In-Original No. DC/JAM/ST/53/2016-17 dated 24.03.2017 (hereinafter referred to as "the impugned order") passed by the Deputy Commissioner, Central Excise Division, Jamnagar (hereinafter referred to as "the lower adjudicating authority").

2. Brief facts of the case are that the Appellant was holding service tax registration number ACMPP1377MSD002 for taxable Services under the category of 'Erection, Commissioning and Installation Service', however, Audit of M/s. N. J. Devani Builders P Ltd, Ahmedabad alleged that Appellant had provided services to M/s. N. J. Devani as a Sub-Contractor for various electrical works. It was also alleged that the appellant had short paid service tax during the period from Jan, 2013 to June, 2016. Show Cause Notice dated 24.10.2016 (hereinafter referred to as "SCN") issued demanded service tax of Rs.28,31,971/- under Section 73 of the Finance Act, 1994 (hereinafter referred to as "the Act") along with interest under Section 75 of the Act, penalty on the appellant under Section 76, 77 & 78 of the Act and also proposed imposition of . The lower adjudicating authority vide impugned order confirmed demand of service tax of Rs. 28,31,971/- along with interest and imposed penalty of Rs. 28,31,971/- under Section 78 of the Act with option to pay reduced penalty and also imposed late fee of Rs.79,800/- a under Section 70 of the Act and penalty of Rs.10,000/- under Section 77(2) of the Act.

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

(i) Adjudicating authority has not considered various submissions and documentary evidences submitted by them in form of Contracts, Invoices, VAT returns etc. filed by Appellant in support of their plea that Rule 2A of Service Tax Determination of Value Rules, 2006, no service tax can be demanded on value of goods that were sold and transferred in the course of providing service.

(ii) Appellant had transferred goods to M/s. N. J. Devani Builders P Ltd and hence it was not in disputed that service provided by the Appellant is covered under the category of "Works Contract Services" as they sold and transferred property in goods to M/s. N J Devani Builders P Ltd and to Pandit Deendayal

Petroleum University and hence provided Works Contract Services; that demand of Service tax can not be confirmed on the ground that registration for Works Contract service was not obtained by Appellant for which only penal provisions can be attracted.

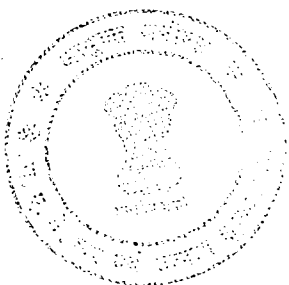
(iii) No service tax was payable by them on sale transactions made with Gujarat Energy Research Management Institute as consideration received was not service.

(iv) It was bonafide belief of Appellant that service of installation of electrical and electronic items sold by them is squarely covered within the definition of works contract service and no service tax is payable on the value of the goods sold, as provided under Rule 2A of Service Tax Determination of Value Rules, 2006; that demand of service tax can not be made by invoking extended period without establishing *mens rea* on the part of Appellant; that invocation of extended period is contrary to CBEC Cir No. 1053/02/2017-CX dated 10.03.2017; that no penalty was imposable upon him under Sectin 78 of the Act.

(v) Appellant submitted that Benefit of Cum duty tax is available to him.

4. Personal hearing in the matter was attended by Shri Vikas Mehta, Consultant, on behalf of the Appellant and reiterated the grounds of Appeal, filed written submission and contended that they have been providing works contract services all along from 2012-13 onwards; that service tax is not payable on value of goods supplied in WCS but VAT is payable on that. He also contended that service tax is payable as per Rule 2A of Service Tax Determination of Value Rules, 2006; that they have already paid service tax in each year; that the impugned order has ignored these facts and demanded service tax on entire value of Works Contract Service including on value of goods supplied under Work Contract Services; that they may be given two weeks time to submit additional submissions.

4.1 Appellant vide letter dated 05.03.2018 made additional submission reiterated the contents of reply filed before the Adjudicating authority and submitted copies of eight duly signed work orders by their client i.e. M/s. N J Devani Builders P Ltd, Pandit Deendayal Petroleum University, and Gujarat Energy Research and Management Institute. Appellant also submitted a certificate from Chartered Accountant and contended that service tax is demanded for the period upto 2014-15 and no demand is made from 2015-16 onwards; that this dichotomy per se would establish that all these contracts were



works contract and service tax could not have been lawfully demanded by taking the entire value of these contracts as taxable value for demanding service tax and relied upon the decisions in the case of Wipro GE Medical Systems P Ltd 2009 (14) STR 43 (Tri. Bang), M/s. LSG Sky Chefs (India) P Ltd 2009(15)STR 545 (Tri-bang), M/s. N.A. Enterprises 2014 (35) STR 856 (Tri-Bang), M/s. Balaji Triupati Enterprises 2013(32)STR 530 (All) and Ramesh Kumar 2017 (52) STR 512 (Tri Chennai).

4.2 No one appeared from the Department even though P.H. Notices were sent to the Commissionerate with request to attend P.H. on the given day.

**FINDINGS: -**

5. I have carefully gone through the facts of the case, the impugned order and written as well as oral submissions of the appellant. The issue to be decided in the present case is whether the appellant is eligible for exclusion of value of goods transferred to service receiver under Rule 2A of Service Tax Determination of Value Rules, 2006 or not and impugned order confirming demand of service tax and imposing penalty on appellant is correct or not.


6. I find that the Appellant's main contentions are that the services provided by them are in the nature of works contract service where they have supplied the goods property of which were transferred to the service recipient on payment of VAT. I find that the adjudicating authority has rejected the appellant's contention on the ground that Appellant had not obtained registration for works contract services, list of electrical materials attached with the contracts were not signed by the recipients of the services and contracts do not stipulate that the work assigned had been inclusive of material and labour to prove that the contracts were composite contracts involving material supply with labour and services.

6.1 I find that Appellant has submitted copies of the contracts/ work orders and also duly signed sheets attached to the work order. I find it appropriate to produce the copies of List of Description and first page of the list of Item with Description for better appreciation of the facts:-

WORK ORDER No. NJD/ELEC/011 dd. 15.11.2011 of M/s. N Devani Builders P Ltd for Rs.3,50,040,108/-

ELECTRICAL WORK OF SPT-III BUILDING MDP-PGP HOSTEL (PHASE-II) PDPU-GANDHINAGAR

No.	Description	Amount
1	HT DP Structure	210,000
2	HT Breaker	1,000
3	Transformer	1,000,000
4	Busduct	64,000
5	Substation & Auxiliary Installation	314,880
7	Distribution Board	3,800,800
8	Cable Trench	140,200
9	11kV Cabling	4,484,225
10	Cable Termination	94,255
11	Cable Tray	1,024,300
12	Internal Wiring	9,454,840
13	Light Fixtures and Fans	3,487,205
14	Earthing	885,450
15	Telephone & Data Distribution Network	2,108,412
16	Miscellaneous	110,970
17	External Lighting	1,183,800
18	Television Distribution	130,150
19	Lightning Arrestor	297,500
20	DC Sets	3,982,500
21	Fire Detection, Alarm and Control Systems	1,957,000
22	Video Surveillance / CCTV Systems	129,835
23	Video Conferencing Systems	
24	Public Address System	27,540
	<b>Total For Electrical Works</b>	<b>35,040,108</b>
	Rebate @ _____ % (if any)	
	<b>Net Total Electrical Works</b>	<b>35,040,108</b>



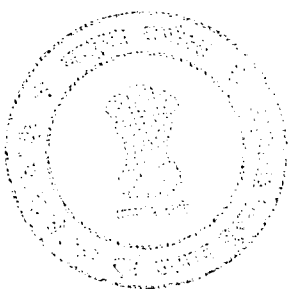
ELECTRICAL WORK OF SPT-III BUILDING MDP-PGP HOSTEL (PHASE-II) PDPU-GANDHINAGAR

No.	Item Description	Unit	Rate	QTY	Amount
11	DP Structure Supplying, Testing & Commissioning of HT DP Structure with necessary civil works as per specification and Details given below. a) 1 set of 11 kV Double pole MS structure (10 meters) b) 3 Nos. 9kV Gapless Lightning Arresters c) 1 no. 400 Amps GOD d) 1 set DC fuses e) 1 set of MS Channel (ISMC 75X40) supports f) 1 set of Pin Insulators (as required) g) 1 set of Disc Insulators (as required) h) 1 set of Stay wire (as required) i) ACSR DOG conductor with Raychem insulation tap (as required) j) other accessories & hardware to make system complete in all respect as per standard design practice and CEIG norms.	No.	160,000	1	160,000
	Rate in words				
12	Leveling & rubble soiling the switchyard and ground with 1" size metal for a height of 150 mm from ground level for 6 x 6 mtr area complete in all respect as directed by engineer in charge.	Job	15,000	1	15,000
	Rate in words				
13	Chain link fencing 50 x 50 mm Square of 10 SWG GI wire, 2m height with gate for switchyard of 10 x 6 m and Runs of barbed wire above complete in all respect as directed by engineer in charge	Job	35,000	1	35,000
	Rate in words				
	<b>Sub Total r.o</b>				<b>210,000</b>
20	HT breaker				
22	Supplying and laying of control wiring using 4c X 2.5 mm <sup>2</sup> PVC insulated and sheathed, armoured, copper conductor cable from alarm and trip				

First page of Work Order NJD/ELECT/005 dtd. 05.09.2011 of M/s. N J Devani Builders, Ahmedabad for Rs.2,50,35,433/-

ELECTRICAL WORK OF ENGINEERING COLLEGE AT MEVAD, NEAR MEHSANA					
Pr. No.	Item Description	Unit	Rate	Qty	Amount
1	<b>DP Structure</b>				
1.1	Supplying, Testing & Commissioning of HT DP Structure with necessary civil works as per specification and Details given below. a) 1 set of 11 kV Double pole MS structure (10 meters) b) 3 Nos. 9kV Gapless Lightning Arresters c) 1 no. 400 Amps GOD d) 1 set DO fuses e) 1 set of MS Channel (ISMC 75X40) supports f) 1 Set of Pin Insulators (as required) g) 1 set of Disc insulators (as required) h) 1 set of Stay wire (as required) i) ACSR DOG conductor with Raychem insulation tap (as required) j) Other accessories & hardware to make system complete. Rate in words	No.	180,000	1	180,000
1.2	Leveling & rubble soiling the switchyard and ground with 1" size metal for a height of 150 mm from ground level for 6 x 6 mtr area complete in all respect as directed by engineer in charge. Rate in words	Job	15,000	1	15,000
1.3	Chain link fencing 50 x 50 mm Square of 10 SWG GI wire, 2m height with gate for switchyard of 10 x 6 m end Runs of barbed wire above complete in all respect as Rate in words	Job	35,000	1	35,000
	<b>Sub Total 1.0</b>				230,000
2.0	<b>HT Breaker</b>				
2.1	Supplying, Testing & Commissioning of HT VCB panel consisting of 1 no. of 400A HT VCB. The panel should have tinned copper busbars and should have one no. of outgoing cable box. The VCB should be complete with metering and protection as per specification. Metering : Voltmeter, Ammeter, Power factor meter (Electronic Type), Frequency meter (Electronic Type), DIGITAL KWH meter, Current Transformers, Voltage Transformers, Trivector meter (digital) with KVA/ KVARH/ KVAH with maximum demand indication in KVA make : all meter as per material specification details.	No.	1,015,000	1	1,015,000
	<b>Relay</b> a) T.P. IDMTL Relay with 2 O/C & 1 E/F Element type EE or equivalent make b) S.P. IDMTL Relay with E/F Element type equivalent to CDG 14 of EE make 4 P c) 2mer Auxiliary protection relay for WTI d) High speed tripping relay equivalent to VAJH 13 of Eeh e) Antipumping relay equivalent to VAA 11 of EE 4 g) Auxiliary relay for winding temperature alarm and trip				
2.2	Supplying and laying of control wiring using 4c X 2.5 mm <sup>2</sup> PVC insulated and sheathed, armoured, copper conductor cable from alarm and trip contacts of relay to VCB including supply of type accessories i.e. Cable gland, lugs etc	Mtr	85	5	425
	<b>Sub Total 2.0</b>				1,016,475
3.0	<b>Transformer</b>				



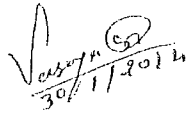
6.2 I find that above work order refers supply of various Electrical equipments/articles to the service recipient with Rate and value of the goods to be supplied. I also find from the work orders dated 07.06.2013, dated 15.7.2013 and dated 8.1.2014 from Pandit Deendayal Petroleum University that scope of the work defines "Procurement and Installation of Electrical Items" and description of item also stipulates supply of goods. Relevant sheets of these contracts are also reproduced as under:-



WORK ORDER No. PDPU/2014/Seimens/003 dated 8.1.14

Supply and laying of specified make Cat 6 4 pair Computer data wire to be done in prelaid PVC pipe / raceway , but without the cost of raceway or pipe ( the wire is to be drawn from server/switch to outlet point)	mtr	6000.00	40.00	2,40,000.00
Supply and laying of specified make Cat 5 4 pair Telephone data wire to be done in prelaid PVC pipe / raceway , but without the cost of raceway or pipe ( the wire is to be drawn from server/switch to outlet point)	mtr	1000.00	24.00	24,000.00
Telephone/Data Outlet Point				
Supplying, installing, testing and commissioning of one telephone point to be done with telephone outlet socket RJ-11 (jack type) and box of the specified make.	no	16.00	400.00	6,400.00
Supply and Installation of 32mm PVC Casing Capping Path	mtr	200.00	38.00	7,600.00
<b>Total Amount</b>				<b>₹16,01,800.00</b>

Taxes & VAT will be Extra as applicable

WORK ORDER NO. PDPU/2013/SPT-3/ADMIN-4 DATED 7.6.13

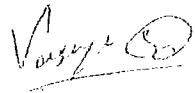
Following is the brief of the cost for Electrical work at Centre for Advance Research:

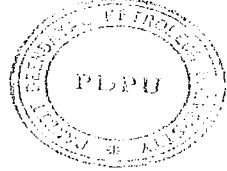

Sr. No.	Particulars	Description of Item	Reqd. Qty	Unit Rate	Total Amount (in Rs.)
1	Electrical Point	As per existing cabin	13	3,900/-	50,700/-
2	LAN Cable	As per existing cabin	1300	43/-	55,900/-
<b>Total</b>					<b>1,06,600/-</b>

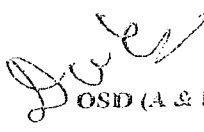
**COMPLETION TIME:**  
 The completion time for above mentioned work will be One month subsequent to the date of issuance of this work order. All other terms and condition are as per above mentioned tender.  
 You are requested to return a copy of this order, duly signed in token of your acceptance and mobilize manpower and material so as to complete the project in stipulated time.  
 Thanking you,

Yours Sincere

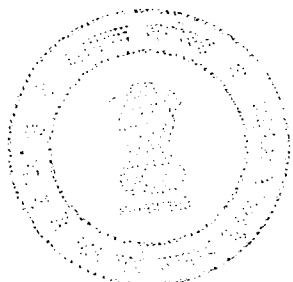
For. Maharashtra E&E





OSD (A & L)





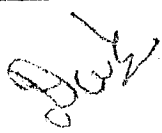


Work order PDPU/2013/GEO-3/DATED 15.7.13

**Annexure: A**

1st Floor, 571-3 Workshop Block Date: 15/7/2013

Location: Electrical Item

No.	Item Description	UOM	Qty.	Rate	Amount
<b>Part - A</b>					
1	Supply & Installation of 6/16A x 250v point for Single Phase Power Point	Nos.	2	2250	4500.00
2	Supply & Installation of 6A x 250v point for Single Phase Power Point	Nos.	4	250	1000.00
3	Supplying and providing main with 2 nos. of 4.0 sqmm cu. Wire & 1 No. 2.5 sqmm Cu. Wire for earthing	Rmt.	110.00	150.00	16500.00
4	Casing Capping Patti	Rmt.	10.00	30.00	300.00
<b>(A) TOTAL Rs.</b>					<b>25000.00</b>
<b>Part - B</b>					
1	Supply and laying of specified make Cat 6 4 pair Computer data wire (Legrand Make)	Rmt.	73.00	43.00	3139.00
2	Supplying and providing main with 2 nos. of 2.5 sqmm cu. Wire & 1 No. 1.5 sqmm Cu. Wire for earthing	Rmt.	5.00	120.00	600.00
3	Computer Power Point (Legrand Make)	No.	1.00	3900.00	3900.00
4	Supply and Installation of powder coated MS base box suitable for Cat6a Computer Data I/O's.	No.	1.00	450.00	450.00
5	Casing Capping Patti	Rmt.	10.00	30.00	300.00
<b>(B) TOTAL Rs.</b>					<b>8389.00</b>
<b>Part - C</b>					
1	Supply and laying of specified make Cat 6 4 pair Computer data wire (Legrand Make)	Rmt.	70.00	43.00	3010.00
2	Supplying and providing main with 2 nos. of 2.5 sqmm cu. Wire & 1 No. 1.5 sqmm Cu. Wire for earthing	Rmt.	53.00	120.00	6360.00
3	Computer Power Point (Legrand Make)	No.	1.00	3900.00	3900.00
4	Supply and Installation of powder coated MS base box suitable for Cat6a Computer Data I/O's.	No.	1.00	450.00	450.00
5	Casing Capping Patti	Rmt.	10.00	30.00	300.00
<b>(C) TOTAL Rs.</b>					<b>14020.00</b>
<b>Part - 1</b>					
1	Supply and laying of specified make Cat 6 4 pair Computer data wire (Legrand Make)	Rmt.	350.00	43.00	15050.00
2	Supplying and providing main with 2 nos. of 2.5 sqmm cu. Wire & 1 No. 1.5 sqmm Cu. Wire for earthing	Rmt.	90.00	120.00	10800.00
3	Computer Power Point (Legrand Make)	No.	6.00	3900.00	23400.00
4	Supply and Installation of powder coated MS base box suitable for Cat6a Computer Data I/O's.	No.	6.00	450.00	2700.00
5	Supply & Installation of 6A x 250v point for Single Phase Power Point	Nos.	2.00	860.00	1720.00
6	Supplying and providing main with 2 nos. of 4.0 sqmm cu. Wire & 1 No. 2.5 sqmm Cu. Wire for earthing	Rmt.	45.00	150.00	6750.00
7	Casing Capping Patti	Rmt.	25.00	30.00	750.00
<b>Part-1 TOTAL Rs.</b>					<b>61370.00</b>
<b>Part - 2</b>					
1	Supply and laying of specified make Cat 6 4 pair Computer data wire (Legrand Make)	Rmt.	330.00	43.00	14190.00
2	Supplying and providing main with 2 nos. of 2.5 sqmm cu. Wire & 1 No. 1.5 sqmm Cu. Wire for earthing	Rmt.	90.00	120.00	10800.00


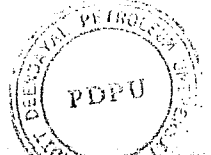
## WORK ORDER DATED PDP/2013/DATED 10.5.13

Gujarat Energy Research Centre, SPT-3 Workshop Building GF

Item: Electrical Item

Item Description	Unit	Qty.	Rate	Amount
Supply and laying of specified make Cat 6 4 pair Computer data wire (Legrand Make)	Rmt.	1000.00	43.00	43000.00
Supply and laying of specified make Cat 5 4 pair Telephone data wire (RR Cabel)	Rmt.	1000.00	40.00	40000.00
Computer Power Point (Legrand Make)	No.	61.00	3900.00	237900.00
Supplying, installing, testing and commissioning of one telephone point to be done with telephone outlet socket RJ-11 (jack type) and box of the specified make.	No.	61.00	365.00	22265.00
Supply and Installation of powder coated MS base box suitable for Cat6a Computer Data I/O's.	No.	61.00	450.00	27450.00
Casing Capping Patch	Rmt.	500.00	30.00	15000.00
C/16A x 250v point for Single Phase Power Point	No.	55.00	2400.00	132000.00
32 A x 415 V plug & socket with interlocked switched socket, FP MCB and surface mounting box IP 66 with DIN rail for 5 module equivalent to legrand make Cat no.56674 but without cost of wiring and piping.	No.	10.00	11500.00	115000.00
Chemical Earthing	No.	2.00	14000.00	28000.00
Supplying and Providing mains with 4 nos. of 6 sqmm Cu. PVC insulated flexible wire with ISI and FIA approval for 650 V/ 1100 V and 2 nos 2.5 sqmm Cu. PVC insulated flexible wires	Rmt.	500.00	390.00	195000.00
Supplying and providing main with 2 nos. of 2.5 sqmm cu. Wire & 1 No. 1.5 Sqmm Cu. Wire for earthing	Rmt.	300.00	120.00	36000.00
Supplying and providing main with 2 nos. of 4.0 sqmm cu. Wire & 1 No. 2.5 Sqmm Cu. Wire for earthing	Rmt.	300.00	150.00	45000.00
S,E,T & C of only 12 Way VTI/N DB	No.	1.00	18000.00	18000.00
Supplying, erecting, testing and commissioning of only TPN D.B. with space for FPMCB as Incoming and space for DP/ELMCB and 8 SP/ELMCB as outgoing per phase with PPI kit (i.e. 12 way per phase D.B.) equeivalent to Legrand cat no 607718+607893	No.	1.00	7700.00	7700.00
6 to 32 A SP MCB	No.	36.00	185.00	6660.00
63 A FP MCB	No.	2.00	2250.00	4500.00
63 A DP ELMCB(ELCB+MCB) (100mA)	No.	3.00	4100.00	12300.00
32A TP MCB	No.	22.00	960.00	21120.00
Total Amount				1006895.00

VAT Will be Extra as applicable

6.3 I find that the work orders dated 10.5.13 & dated 8.1.14 from the Pandheet Dindayaal University refer "VAT will be extra as applicable" and the Work order dated 04.07.13 of Gujarat Energy Research and Management Institute is in respect of Supply & Installation of Electrical Point and LAN Point for Biometric System Setup. Appellant submitted Chartered Accountant's certificate dated

19.02.2018 issued by M/s. Chetan Agrawal & Co certifying that the appellant has paid VAT on sale Transaction and service tax on provision of services to the service recipients discussed hereinabove and also produced year wise & client wise work sheets giving details of 'sales invoices' & 'service invoices' and tax paid by the Appellant correlating Work Orders. I am, therefore, of the considered view that the transfer of property in goods supplied during the course of provision of services is established. The appellant has submitted that the value of services is required to be considered as per the provisions of Rule 2A of the Service Tax (Determination of Value) Rules, 2006 (hereinafter referred to as "Valuation Rules", which reads as under:-

**"RULE 2A. Determination of value of service portion in the execution of a works contract.** — Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely :-

(i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods [or in goods and land or undivided share of land, as the case may be] transferred in the execution of the said works contract.

**Explanation.** - For the purposes of this clause,-

(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include, -

(i) labour charges for execution of the works;

(ii) amount paid to a sub-contractor for labour and services;

(iii) charges for planning, designing and architect's fees;

(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;

(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;

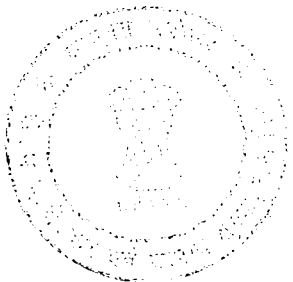
(vi) cost of establishment of the contractor relating to supply of labour and services;

(vii) other similar expenses relating to supply of labour and services; and

(viii) profit earned by the service provider relating to supply of labour and services;

(c) where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause;

(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely :-



*(A) - in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent of the total amount charged for the works contract;*

*[Provided that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty per cent. of the total amount charged for the works contract.]*

*(B) in case of works contract, not covered under sub-clause (A), including works contract entered into for, -*

*(i) maintenance or repair or reconditioning or restoration or servicing of any goods; or*

*(ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property,*

*service tax shall be payable on seventy per cent. of the total amount charged for the works contract.*

*....."*

6.4 I find that as per Rule 2A of the Valuation Rules, *Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract.* Rule 2A of the Valuation Rules provides for mechanism to ascertain the value of services in a composite works contract involving services and goods. I find that no evidence is adduced in the SCN nor discussed in the impugned order that the sale of goods which are covered under VAT returns were not part of the services provided by the Appellant. The Chartered Accountant's certificate and Appellant's statement dated 2.8.2016 stating that they were preparing separate invoices each for material supply and towards provisioning of services, are evidencing that the appellant was providing works contract services with transfer of property in goods whereas show cause notice did not allege that VAT paid goods (reported in VAT returns) were different from what were supplied during the course of provisioning of the services. Once it is established that the contract for services also includes supply of goods and if VAT/sales tax has also been paid on such supply, I have no option but to hold that the appellant has paid VAT on goods transferred to the recipient and value of such goods is required to be excluded from the gross amount charged for the works contract services provided by him. It is now settled position of law that once an amount suffers sales tax/ VAT, service tax can not be demanded on the same amount.

6.5 As regards services provided to M/s. Malani Construction Co, Rajkot appellant has not given any specific submission however, in their submission dated 05.03.2018, they reiterated their reply filed before the Adjudicating

authority. I find that Appellant at Para 9 of the said reply has contended that to the best of their knowledge service was provided in relation to a government-run hospital and would submit further submission to the adjudicating authority. I find that appellant, except expressing their belief, has not submitted any evidence in support of their claim that no service tax was payable by them on the service provided to M/s. Malani Construction Co. I, therefore, reject the appeal to that extent and hold that service tax is payable by the Appellant on the value of the services provided to M/s. Malani Construction Co, Rajkot.

7. I find that Appellant had not obtained registration of the services under the category of "Works Contract Services" and had applied for amendment in registration only in July, 2016. This is a technical aspect as non-inclusion of any service in the service tax registration do not alter nature of the services provided and assessment of service tax can not be made on the basis of services registered in registration certificate only. However, the appellant failed to include the said service in their service tax registration till July, 2016 in violation of Rule 4 of Service Tax Rules, 1994 and hence, I hold penalty of Rs.10,000/- imposed upon the appellant under Section 77(2) is correct, legal and proper.

8. I find that late filing of ST-3 returns is not disputed by the Appellant and hence, I uphold imposition of late fee of Rs.79,800/- under Rule 7C of Service Tax Rules, 1994 read with Section 70 of the Act.

9. I find that appellant has not disclosed their liability of service tax on the services provided by them to M/s. Malani Construction Co Rajkot and non payment of service tax was revealed only during the course of investigation. I am of the considered view that in era of self assessment, the appellant is required to comply with the law on their own, in which appellant failed inasmuch as appellant declared incorrect value and also not paid service tax. Therefore, ingredient of suppression of facts with intent to evade payment of service tax exists in this case. Hence, I uphold the mandatory penalty equal to service tax demand payable in respect of the services provided to M/s. Malani Construction Co., Rajkot under Section 78 of the Act. However, I hold that since service tax demand in respect of services provided to service recipients other than M/s. Malani Construction Co., Rajkot does not sustain, no penalty is imposable upon the appellant under Section 78 of the Act.