



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

द्वितीय तल, जी एस टी भवन / 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 :-

DIN - 20210564SX000000A3E6

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / OIO No.	दिनांक / Date
	V2/53/RAJ/2020	DC/Jam-I/ST/24/2019-20	20.3.2020

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

RAJ-EXCUS-000-APP-16-2021

आदेश का दिनांक /
Date of Order: **24.05.2021** जारी करने की तारीख /
Date of issue: **27.05.2021**

श्री अखिलेश कुमार, आयुक्त (अपील), राजकोट द्वारा पारित /
Passed by **Shri Akhilesh Kumar**, Commissioner (Appeals),
Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर,
राजकोट / जामनगर / गांधीधामा द्वारा उपयुक्तलिखित जारी मूल आदेश से सृजित: /
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. Gujarat Industrial Development Corporation, GIDC-1, Near Navsarjan Complex, Opp Swami Narayan Gurukul, Jamnagar.

इस आदेश (अपील) से ब्यथित कोई व्यक्ति निम्नलिखित तरीके से 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) बर्गीकरण 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 असारवा अहमदाबाद- 380016 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) 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 रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित 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/-.

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(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 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 अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित 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 fee 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/-.

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- (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 प्रामाणित होगी 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 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 जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये 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) सेनबेट जमा की ली गई गलत राशि
(iii) सेनबेट 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 स्थान नहीं एवं 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 को पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, 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 बरी 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 an 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 ड्यूटी क्रेडिट 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 तरीक़ अथवा समावाविधि 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 प्रतियाँ 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 प्रतियाँ 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 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 Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed 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 (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित 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, अपीलाधीन 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. Gujarat Industrial Development Corporation, Jamnagar (hereinafter referred to as "Appellant") has filed Appeal No. V2/53/RAJ/2020 against Order-in-Original No. DC/JAM-I/ST/24/2019-20 dated 20.3.2020 (hereinafter referred to as "impugned order") passed by the Deputy Commissioner, CGST & Central Excise, Division-I, Jamnagar (hereinafter referred to as "adjudicating authority").

2. The facts of the case, in brief, are that the Appellant, a Government of Gujarat Undertaking, was established under the Gujarat Industrial Development Act, 1962. It was registered with Service Tax department under Registration No. AABCG8033DSD007 for 'Renting of Immovable Property Service'.

2.1 During audit of the records of the Appellant carried out by the Departmental Officers, it was observed that they were generating income from various operations and booking these incomes under different Heads like Non Agriculture Conversion Charge, Transfer Fee, Infrastructure Upgradation Fee, Misc. Receipts/ Recovery etc., which were allegedly taxable and hence, liable to service tax. Based on the audit observations, Show Cause Notice was issued to the Appellant on 17.3.2017 for the period from 2011-12 to 2015-16, which was adjudicated by the Commissioner, CGST and Central Excise, Rajkot who confirmed service tax demand on the income booked under the Head 'Misc. Receipts/ Recovery' under the category of 'Business Auxiliary Service' but dropped remaining service tax demand vide Order-in-Original dated 30.10.2017.

2.2 The Appellant was asked to provide details of income booked under the Head 'Misc. Receipt/ Recovery' for the subsequent period of April, 2016 to June, 2017. They vide letter dated 13.2.2019 informed that they received income of Rs. 12,80,087/- under the Head 'Misc. Receipt/Recovery' during the said period.

2.3 Thereafter, Show Cause Notice No. V.ST/GSTAR-III/JMR-1/02/2019-20 dated 1.4.2019 was issued to the Appellant calling them to show cause as to why Service Tax amount of Rs. 1,92,013/- should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994, along with interest under Section 75 of the Act and why penalty under Sections 76, 77 and Section 78 of the Act should not be imposed on them.

2.4 The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order who confirmed Service Tax demand of Rs. 1,92,013/- under Section 73(1) of the Act along with interest under Section 75 of



the Act. He also imposed penalty of Rs. 1,92,013/- under Section 78 of the Act and Rs. 10,000/- under Section 77(1) of the Act and Rs. 30,000/- under Section 77(3) of the Act.

3. Being aggrieved, the Appellant has preferred appeal on various grounds, *inter alia*, as below:-

(i) The impugned order has confirmed service tax demand on the income booked under the head 'Miscellaneous Receipt' under the service tax category of 'Business Auxiliary Service'. However, for raising demand in the SCN, neither nature of service being provided by the Appellant was elaborated nor it is clarified as to how miscellaneous receipt is covered under the category of 'Business Auxiliary Service'. Hence, demand itself is liable to be set aside.

(ii) That the Appellant was established under the Gujarat Industrial Development Act, 1962 by the Government of Gujarat for the purpose of securing orderly establishment and organization of industries in industrial areas and industrial estates in Gujarat and for establishing commercial center in connection with the establishment and organization of such industries. Various areas in Gujarat where industries were clustered were declared as GIDC zones and new industrial zones were also created and plots of land were allotted to willing industries on economical terms so that overall industrial development could take place in a structured and planned manner.

(iii) The appellant, being a governmental authority, is eligible for exemption w.e.f. 01.07.2012 pursuant to Entry No. 39 of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012, which reads as under:

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

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



which are entrusted to a municipality under Article 243W of the Constitution and Schedule XII of the Constitution. Thus, it can be said that any activity performed by appellant in relation to the purpose for which, appellant has been established, would qualify for exemption from service tax under entry 39 of the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 and hence service tax shall not be levied and relied upon Judgement of Bombay High Court passed in case of MIDC reported as 2018 (9) G.S.T.L. 372 (Bom.).

(iv) Since the Appellant is not liable to pay Service Tax confirmed in the impugned order, no interest is payable under Section 75 of the Act.

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

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

4. Personal hearing was conducted in virtual mode through video conferencing on 12.2.2021. Ms. Bhagyashree Dave, C.A. appeared on behalf of the Appellant. She reiterated the submission made in Appeal Memorandum.

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and written as well as oral submissions made by the Appellant. The issues to be decided in the present case are whether the Appellant is liable to pay Service Tax on the income booked under the Head 'Misc. Receipt/Recovery' or not and whether the Appellant is liable to penalty under Sections 77 and 78 of the Act or not.

6. On going through the records, I find that the Appellant booked income of Rs. 12,80,087/- under the head 'Misc. Receipt/ Recovery' during the period from



April, 2016 to June, 2017. The adjudicating authority confirmed service tax demand of Rs. 1,92,013/- on the said income under Business Auxiliary Service by denying the benefit of exemption from service tax under Entry No. 39 of Exemption Notification No. 25/2012-ST dated 20.06.2012, as amended.

6.1 The Appellant has contended that they qualify as a governmental authority and perform various functions which are entrusted to a municipality under Article 243W of the Constitution. It was argued that activities performed by them would qualify for exemption from service tax under Entry 39 of Exemption Notification No. 25/2012-ST dated 20.06.2012 and hence, they are not liable to service tax. They further contended that the impugned order has confirmed service tax demand on the income booked under the head 'Miscellaneous Receipt' under the service tax category of 'Business Auxiliary Service' without elaborating the nature of service provided by them nor it is clarified as to how miscellaneous receipt is covered under the category of 'Business Auxiliary Service'.

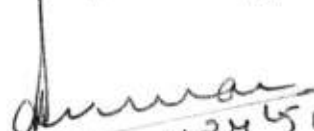
7. I find that the adjudicating authority has not elaborated the nature of activities undertaken by the Appellant for generating income, which was booked under the head 'Misc Receipt/Recovery', as rightly contended by the Appellant. On the other hand, the Appellant has claimed exemption from service tax under Entry No. 39 of Exemption Notification No. 25/2012-ST dated 20.6.2012 without explaining nature of activities or type of service rendered by them in connection with the said income booked under the head 'Misc Receipt/Recovery'. Under the circumstance, it is not possible for this appellate authority to decide whether the income booked under the head 'Misc Receipt/Recovery' is liable to service tax or not. I, therefore, find this case fit for remand to adjudicating authority for de-novo adjudication. The adjudicating authority is directed to ascertain nature of activities carried out by the Appellant in respect of income booked under the head 'Misc Receipt/Recovery' and examine whether the Appellant is eligible for exemption from service tax under Entry No. 39 of exemption Notification No. 25/2012-ST dated 20.6.2012, as amended, as claimed by them. The Appellant is also directed to provide required information to the adjudicating authority as and when called upon. Needless to mention that de novo order shall be passed by adhering to the principles of natural justice.

7.1 Regarding penalty imposed under Section 78 of the Act, I find that present case involves periodical Show Cause Notice and facts involved in the present case are identical to the facts of principal Show Cause Notice dated 17.3.2017 issued to the Appellant for the previous period. Further, the adjudicating



authority has confirmed demand under Section 73(1) of the Act. Under the circumstances, penalty imposed under Section 78 of the Act on the grounds of suppression of facts with intent to evade payment of service tax is not sustainable. I, therefore, hold that penalty under Section 78 is not imposable in the present case.

8. In view of above, I set aside the impugned order and dispose the appeal by way of remand.


 24 May, 2021
 (Akhilesh Kumar)
 Commissioner (Appeals)

Attested



(V.T.SHAH)
 Superintendent(Appeals)

By R.P.A.D.

To,
 Gujarat Industrial Development Corporation,
 GIDC-1, Near Navsarjan Complex,
 Opp Swami Narayan Gurukul,
 Jamnagar.

प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) उप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, जामनगर-1 मण्डल, जामनगर, को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।



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