



::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



सत्यमेव जयते

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रजिस्टर्ड डाक ए.डी.द्वारा

DIN-20221064SX0000022224

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/2/RAJ/2021	DC/JAM-I/ST-19/2020-21	27-11-2020

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

**RAJ-EXCUS-000-APP-067-2021**

आदेश का दिनांक / Date of Order:	30.12.2021	जारी करने की तारीख / Date of issue:	12.01.2022
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श्री अखिलेश कुमार, आयुक्त (अपील्स), 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 / गांधीधाम। द्वारा उपरलिखित 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. Raviraj Infra Projects Pvt Ltd (304-307, Shopping Point), Digjam Circle, Jamnagar-361006, Gujarat.

इस आदेश (अपील) में 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 प्रांत अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 का 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 बताया गए अपीलों के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६ 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, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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। स्वयं आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 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, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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। स्वयं आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 shall 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/-



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवली, 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 निदेश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 of 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, बशर्त 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
- धारा 11 डी के अंतर्गत रकम
  - सेनबेट जमा की ली गई गलत राशि
  - सेनबेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्त 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 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 कोपनरीक्षण आवेदन :  
**Revision application to Government of India:**  
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मजिल, 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:
- 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
  - 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 (फिबेट) 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.
  - 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.
  - मुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी 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 तारीख अथवा समायाचिधि 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.
  - 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.
  - 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 कोई मूल आदेशो का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त वंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पडती 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 umbers 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-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 बर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in).



**:: ORDER IN APPEAL ::**

The present appeal has been filed by M/s. Raviraj Infra Project Private Limited, 304-307, Shopping Point, Digjam Circle, Jamnagar-Khambhaliya Highway, Jamnagar-361008 (hereinafter referred to as "appellant") against Order- In- Original No. DC/JAM-I/ST/19/2020-21 dated 27.11.2020 (hereinafter referred to as "impugned order") passed by the Deputy Commissioner, Central Goods and Service Tax, Jamnagar Division-I, Jamnagar (hereinafter referred to as "adjudicating authority").

2. The facts of the case, in brief, are that the appellant was holder of Service Tax Registration in Form ST-2 under Section 69 of Chapter V of the Finance Act, 1994 (hereinafter referred to as 'the said Act) bearing No. AADCR5484KST001 under the category of Construction Service other than residential complex, including commercial/industrial building or civil structure, Supply of Tangible Goods, Site Formation and Clearance, Excavation, Earth moving and demolition services, Cargo Handling Service, Works Contract Service, Transport of Goods by Road/GTA Service, Manpower Recruitment/ Supply agency Service, Erection Commissioning and Installation Service, Business Auxiliary Service etc. and have undertaken to comply with the condition prescribed in the Finance Act, 1994 and the Service Tax Rules, 1994 (hereinafter referred to as 'the said Rules).

3.1 During the course of audit of records of the appellant by the departmental officers, scrutiny of the financial records as well as other documents and reconciliation of the value of taxable service and payment of service tax for the F.Y. 2015-16 was examined. It was observed that the appellant had in their ledger accounts / sales register shown value of services provided by them during the F.Y. 2015-16 as Rs. 15,40,54,842/-, however in the respective ST-3 returns for the period, the gross value of services provided by them during the F.Y.2015-16 had been shown as Rs. 13,16,29,276/-. Hence, the value of services amounting to Rs. 2,24,25,566/- had not been shown in their respective ST-3 returns filed for the F.Y. 2015-16.

3.2 Further, in the ST-3 returns for the period April, 2015 - September, 2015, a query was raised by ACES system that Exemption Notification No. 25/2012 - ST [Serial No. 29(h)] was not applicable to the service viz. Construction services other than residential complex, including commercial/ industrial buildings or civil structures for the period, and that there was a short payment of service tax amounting to Rs. 36,92,645/-, Education Cess of Rs. 25,881/- and SHE Cess of Rs.13,007/- (Total of Rs. 37,31,534/-). Further queries were also raised for the period October, 2015 - March, 2016, in ST-3 return by ACES system that there was a short payment of service tax



amounting to Rs. 19,05,045/- and of SB cess of Rs. 17,911/- during the period.

3.3. The above observations culminated into issuance of Show Cause Notice No. V.ST/AUDIT-III/SCN-ADC-03/17-18 dated 20.04.2017 demanding Service Tax along with applicable cess for the FY 2015-16 along with interest and penalty. The said show cause notice was adjudicated vide Order-in-Original No. 11/ADC/AK/2017-18 dated 27.02.2108 and subsequently by Order-in-Appeal No. RAJ-EXCUS-000-APP-038-2019 dated 10.04.2019, wherein the demand was confirmed and upheld.

3.4. For the subsequent period, the details of the services provided along with gross amount received, exempted services provided with notification number governing exemption of service and Income as per the Profit and Loss Account for the period April - 2016 to June, 2017 were called for from the appellant by the Superintendent, Central Goods and Service Tax Range III, Jamnagar vide letter F. No. V.ST/AUDIT-III/SCN-ADC-03/ 17-18 dated 07.02.2019. In reply, the appellant vide their letter dated 24.04.2019 had provided the details regarding the exempted services provided during the above mentioned period.

3.5 On verification of the details, it appeared that the appellant had availed the benefit of the following exemption notifications for payment of service tax:

- (i) Notification No. 12/2013 - ST dated 01.07.2013 for services provided to M/s Reliance Industries Limited, Jamnagar (SEZ) & M/s Reliance Port Terminal Limited, Sikka (co-developer of M/s RIL SEZ)
- (ii) Notification No. 25/2012-ST dated 20.06.2012 amended vide Notification No. 09/2016-ST dated 18.02.2016 for services provided to M/s Rajlaxmi Construction, Jamnagar, construction services in respect of commercial or industrial building and civil structures at Essar Port
- (iii) Sr. No. 1(i)B(ii) of Notification No. 07/2015-ST dated 01.03.2015 read with Notification No. 30/2012-ST dated 20-06-2012 for services provided to M/s AWT Energy Private Limited under the category of Manpower recruitment / supply agency services.

However, on perusal of the Notification No. 30/2012-ST dated 20.06.2012, as amended vide Notification No. 07/2015-ST dated 01.03.2015, it was observed that the benefit of exemption under Sr. No. 1(ii) and B(iii) of Notification No. 07/2015-ST dated 01.03.2015 in respect of services provided under the category of supply of manpower to M/s AWT Energy Private Limited was not available to the service provider i.e. the appellant being a body corporate.

3.6. Further, on scrutiny of the details provided by the appellant, it appeared that the value of the services provided for the period from April-2016 to June 2017 was Rs. 30,63,51,543/- and the value of eligible exempted services was Rs. 8,06,44,313/-. On the basis of details provided by the



appellant and as available in respective ST-3 returns, it appeared that the appellant had made short payment of service tax to the tune of Rs. 45,07,568/ in respect of services provided by them during the F.Y.2016-17 and F.Y. 2017-18 (up to June-17). Therefore, Show Cause Notice V.ST/GSTR-III/JAM-1/2019-20 dated 21.05.2019 for demanding Service Tax to the tune of Rs. 45,07,568/- in respect of services provided by them during period was issued. The said Show Cause Notice was adjudicated vide the impugned order wherein the Adjudicating Authority has confirmed the demand of Service Tax amounting to Rs. 4,22,615/- under Section 73 of the Act, dropped the remaining demand of Rs. 40,84,916/-, impose penalty of Rs. 42,266/- and Rs. 10,000/- under Section 76 and Section 77 *ibid* respectively.

4. Being aggrieved with the impugned order, the Appellant has preferred present appeal on the following grounds:

- 1) The Order-in-Original in question is patently against law, contrary to the facts on record, unjust, erroneous and passed without proper justification and application mind. The same is required to be quashed on this ground alone.
- 2) On the facts and in the circumstances of the case, the Order-in-Original in question has been passed based on assumptions, presumptions, conjectures and surmises and without proper consideration of facts and records and settled position of law, hence, the said order is liable to be set aside.
- 3) That two times independent inquiry has been made one by the audit team, and one by the Intelligence, and the demand has been determined after the reconciliation with the books of accounts and third innings by issuing the said show cause notice is *per se* illegal and against the law and principles of natural justice and equity of India.
- 4) The appellant would further like to submit that the Departmental Audit was conducted by Officers of Audit Commissionerate, Rajkot for period from April 2016 to June 2017 and Final Audit Report No. AUDIT/RJT/3/AG- 16/435/2019-20 dated 29.08.2019 was issued.
- 5) They also submit that the preceding adjudicating officer of the Authority passed this order has reconciled the Full books of account of the Appellant by taking into consideration Annual Report, 26AS and other materials and passed the order in original no. AC/JAM-1/ST/07/2019-20 by date of order on 29-05-2019 and in the main part of order detailed calculation has been given and final order has been passed by considering the submission and issue reach to the finality.



- 6) The proposed show cause notice of the Order against which this appeal is preferred also relates to the amount of Rs. 45,07,568/- which is also baseless issued and ultimately some demands have been raised although all the reconciliation had been produced before the authority.
- 7) They further submit that the third innings done by the authority is perse illegal when the audit has been done and the Final Report for the audit has been passed.
- 8) They requested to quash and set aside Order In Original in question passed by the Lower Adjudicating Authority.

5. Personal Hearing in the matter was held on 30.09.2021 in virtual mode. Shri Sarvesh Gohil, Chartered Accountant, as authorized person appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum.

6. I have carefully gone through the facts of the case, the impugned order, written as well as oral submissions made by the Appellant. It is observed that the issue to be decided in the present appeal is whether in the facts and circumstances of the case, the demand of Service Tax amounting to Rs. 4,22,615/- confirmed by the Adjudicating Authority vide impugned order is legal and proper or otherwise.

6.1. It is observed from the case records that the impugned demand has been raised as a consequence to the audit conducted by the officers of the erstwhile Audit Commissionerate, Rajkot on the records of the appellant for the period F.Y. 2015-16. It was observed by the audit officers that there was short payment of Service Tax on account of reconciliation of value of taxable services for the period F.Y. 2015-16 and that the appellant had wrongly availed benefits of exempted service. Based on the audit observations, the Show Cause Notice dated 20.04.2017 was issued to the appellant which was adjudicated by the competent authority vide Order-in-Original No. 11/ADC/AK/2017-18 dated 27.02.2018 confirming the demand. The demand was subsequently upheld by the Commissioner (Appeal), Rajkot vide OIA No. RAJ-EXCUS-OOO-APP-038-2019 dated 10.04.2019.

6.2. For the subsequent period i.e. April 2016 to June 2017, the jurisdictional Range Officer had obtained the information related to reconciliation of value of taxable services declared before various authorities and exempted value of service provided by them during this period. Based on the information received, the impugned Show Cause Notice was issued for demanding Service Tax short paid amounting to Rs. 45,07,568/- under

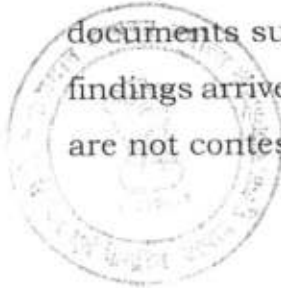


proviso to Section 73(1) of the said Act along with interest and proposed imposition of penalties under Section 76, 77 and 78 of the said Act. The impugned Show Cause Notice has been issued on following issues:

- i) Denial of benefit of exemption under Serial No. 1(ii) and B(iii) of Notification No. 07/2015-ST dated 01.03.2015 read with Notification No. 30/2012 - ST dated 20.06.2012 in respect of services provided by the appellant under the category of supply of manpower to M/s AWT Energy Private Limited as they were a body corporate;
- ii) Reconciliation of Gross Value of Services as per Profit and Loss Account and those reflected in the ST-3 Returns for the period F.Y. 2016-17 and F.Y. 2017-18 (up to June, 2017).

6.3. The impugned SCN was decided by the Adjudicating Authority vide impugned order wherein the demand of Service Tax amounting to Rs. 4,22,652/- was confirmed under Section 73 of the said Act along with interest. Penalty of Rs. 42,266/- and Rs. 10,000/- under Section 76 and Section 77 of the said Act was imposed respectively. As regards the contentions raised in the SCN, the adjudicating authority has in Para 22 of the impugned order held that from verification of the documents submitted by the appellant and the ST-3 Returns for the disputed period, the appellant had not claimed the said exemption for the services provided to M/s AWT Energy Private Limited under the category of 'supply of man power'. It was further held that based on the revised documents submitted by the appellant, value of exempted service calculated in the impugned notice was erroneous. The adjudicating authority has further examined the contention of the appellant regarding earlier SCNs issued to them during the period (as detailed in Para 26 of the impugned order) and arrived at net liability of Rs. 4,22,652/- for F.Y. 2016-17 and excess payment of Rs. 20,595/- for F.Y. 2017-18 (up to June 2017). The amount of Rs. 4,22,652/- short-paid during F.Y. 2016-17 was confirmed by him accordingly under Section 73 of the Act along with interest under 75 and penalty under Section 76 of the Act. It was further held in Para 32 of the impugned order that this case was not fit for invocation of extended period under proviso to Section 73 (1) of the Finance Act, 1994.

6.4. In view of the above, it is apparent that there was no claim of exemption in respect of services of man power supply to M/s AWT as alleged in the SCN. Further, the adjudicating authority has also found the value of exempted services in the SCN to be erroneous and considered additional documents submitted by the appellant while re-quantifying the demand. The findings arrived by the adjudicating authority and re-quantification of demand are not contested by the department.





7. It is further observed that the appellant has challenged the impugned SCN and the impugned order mainly on the grounds that audit on their records was already conducted for the period from April 2016 to march, 2017 and they have complied with all the observations made by the audit officers and also made payment. Further, the demand for the said period was also adjudicated by the adjudicating authority vide Order in Original No. AC/JAM-1/ST/07/2019-20 dated 29-05-2019. Hence, there was duplication of demand. Moreover, the issue which has reached finality vide above actions of the department cannot be subsequently opened vide the SCN in question.

7.1. In this regard, I find that the Adjudicating Authority had discussed this aspect in Para 26 of the impugned order and then quantified the demand based on the documents submitted by the appellant. I find that the present demand covering the period F.Y. 2016-17 to 2017-18 (up to June, 2017) is well within the normal time period under Section 73(1) of the Finance Act, 1994. The Adjudicating Authority has categorically stated in Para 33 of the impugned order and held that the entire demand of Rs. 4,22,652/- is liable to be confirmed and recovered in terms under Section 73(1) of the Finance Act, 1994. The text of Para 33 of the impugned order is as under:

*33 In view of the case law cited in para supra, I find that the allegation of suppression of facts with intent to evade tax on the Noticee is not sustainable in the eyes of law when one show cause notice was issued to the Noticee earlier on the same set of facts and this was within the knowledge of the department. I also find that the demand notice has been issued well within the normal period of limitation. Hence, I am of the considered view that the entire demand of Rs. 4,22,652/- is liable to be confirmed and recovered in terms under Section 73(1) of the Finance Act, 1994*

7.2. It is further observed that the demand in this case has been arrived by the adjudicating authority after taking in to account all the payments made by the appellant and reconciliation of Financial Records with the ST-3 Returns. The demand has been confirmed within the normal period of limitation. Therefore, I do not find any merit in the appeal preferred by the appellant and the same is rejected, being devoid of any merit.

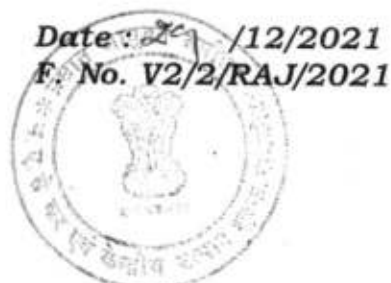
8. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।  
8. The appeal filed by the Appellant is disposed off as above.

सत्यापित / Attested

*[Signature]*  
12/12/21

एन. सी. गाजरीया  
N. C. Gajariya  
अधीक्षक  
Superintendent

*[Signature]*  
29/12/2021  
( अखिलेश कुमार )  
आयुक्त(अपील्स)





By R.P.A.D.

To,

M/S. Raviraj Infra Project Private Limited,  
304-307, Shopping Point, Digiam Circle,  
Jamnagar-Khambhaliya Highway,  
Jamnagar-361008

**Copy to:-**

1. *The Chief Commissioner, GST & Central Excise, Ahmedabad Zone Ahmedabad for kind information please.*
2. *The Commissioner, GST & Central Excise, Rajkot Commissionerate, Gandhidham for information and necessary action.*
3. *Deputy/Assistant Commissioner, Central Goods and Service Tax, Jamnagar-I Division, Jamnagar for necessary action.*
- ✓ 4. *Guard File.*



