



::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. बी. द्वारा

DIN-20220264SX000000E34D

|   |  |                             |                 |
|---|--|-----------------------------|-----------------|
| क | अपील / फाइल संख्या/<br>Appeal / File No. | मूल आदेश सं /<br>O.I.O. No. | दिनांक/<br>Date |
|   | V2/15/RAJ/2021                           | DC/JAM-1/ST/02-03/2020-21   | 29-06-2020      |

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

**RAJ-EXCUS-000-APP-068-2021-22**

|                                    |            |  |            |
|------------------------------------|------------|--|------------|
| आदेश का दिनांक /<br>Date of Order: | 28.01.2022 | जारी करने की तारीख /<br>Date of issue: | 01.02.2022 |
|------------------------------------|------------|--|------------|

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

- ग अथवा आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से मूजित: /  
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. Jadeja Associates (Main Bazar, Village- Jhakhhar), Taluka- Lalpar, Jamnagar, Gujarat.

इस आदेश (अपील) से अप्पित 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) सामान्य शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थी न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत 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) सर्वोच्च न्यायालय में सम्बन्धित सभी मामलों में सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थी 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 अपीलार्थी के अलावा शेष सभी अपीलार्थी सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थी 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) अपीलार्थी न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवाली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलार्थी 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 अपीलार्थी न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/  
The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/-, Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-
- (B) अपीलार्थी न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलार्थी 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 अपीलार्थी 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 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/-.



- (ii) 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 प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise / Service Tax to file the appeal before the Appellate Tribunal.
- (iii) 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 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 अंतर्भूत से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान अर्थात् 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 ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, समद 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) मुनिखित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्रेडिट केडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश की आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं- 2), 1998 की धारा 109 के द्वारा निर्यात की गई तारीख अथवा समावधि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.  
(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश या 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 चाहिये। इस तथ्य के होते हुए भी की लिखा पत्री कार्य से बचने के लिए कदाचित् 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 टिकिट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended.  
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में 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 ::**

M/s. Jadeja Associates, District: Jamnagar (hereinafter referred to as "Appellant") has filed Appeal No. V2/15/RAJ/2021 against Order-in-Original No. DC/JAM-I/ST/02-03/2020-21 dated 29.6.2020 (hereinafter referred to as 'impugned order') passed by the Deputy Commissioner, Central GST Division-I, Jamnagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Appellant was engaged in providing various services viz. Supply of Tangible Goods Service, Site Formation and Clearance Service, Earth Moving and Demolition Service etc. and was registered with Service Tax Department having Registration No. AAEFJ1896PSD001. During audit of the records of the Appellant undertaken by the Departmental officers, it was observed that the Appellant had not paid service tax in respect of services rendered to their principal contractor M/s Megha Engineering & Infrastructure Ltd, Hyderabad (hereinafter referred to as "M/s Megha"). It was further observed that the Appellant had availed exemption under Notification No. 25/2012-ST dated 20.6.2012, as amended, on the ground that the Works Contract Services provided by M/s Megha was eligible for exemption under Notification No. 25/2012-ST dated 20.6.2012 and hence, services rendered by them to M/s Megha were also eligible for exemption under the said Notification. On verification of Work Orders issued to the Appellant, it appeared to the Audit that the services rendered by the Appellant were not covered under the category of 'Works Contract Service' and hence, they were not eligible for exemption under Notification No. 25/2012-ST dated 20.6.2012, as amended.

2.1 Based on audit observation, Show Cause Notice No. VI(a)/8-49/Circle-IV/2015-16 dated 5.4.2017, covering the period from January, 2015 to March, 2016, was issued to the Appellant, calling them to show cause as to why service tax amounting to Rs. 39,93,964/- should not be demanded and recovered from them under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'Act'), along with interest under Section 75 of the Act and proposed imposition of penalty under Sections 76, 77 and 78 of the Act.

2.2 For the subsequent period of April, 2016 to June, 2017, the Appellant was asked to provide details of exempted services provided by them. In reply, the



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Appellant vide letter dated 11.4.2019 informed that they had provided services amounting to Rs. 1,56,76,389/- to M/s Megha by claiming exemption under Notification No. 25/2012-ST dated 20.6.2012. Hence, Show Cause Notice No. V.ST/GSTR-V/Jam-I/08/2019-20 dated 16.4.2019 was issued to the Appellant, calling them to show cause as to why service tax amounting to Rs. 23,38,876/- should not be demanded and recovered from them under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'Act'), along with interest under Section 75 of the Act and proposed imposition of penalty under Sections 76, 77 and 78 of the Act.

2.3 The above Show Cause Notices were adjudicated by the adjudicating authority vide the impugned order who confirmed demand of service tax totally amounting to Rs. 63,32,840/- under Section 73(1) of the Act, along with interest under Section 75 of the Act and imposed penalty of Rs. 63,32,840/- under Section 78 of the Act and penalty of Rs. 20,000/- under Section 77(2) of the Act.

3. Being aggrieved, the Appellant preferred the present appeal contending, *inter-alia*, as under:

(i) The para No. 5 of Work Order dated 14.12.2012 contains the terms and conditions as regard supply of materials by them, which itself establishes the service as to fall under Works Contract. However, based on the clause (d) of the said Para No.5, adjudicating authority erroneously concluded that the service provided by them was covered under the category of "site formation and clearance, excavation, earthmoving and demolition". Such conclusion is made in total ignorance of Clause (a), (c), (g) of the said Para No.5, which refer to terms & conditions as to the supply of the tools, equipment & machinery. In Works Contract, what is material is a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property. Thus, supply of any other material, in whatever quantity, by the recipient of the service of the Works Contract, does not disqualify the said service to fall under Works Contract. Supply of sand by the recipient



of the service of the Works Contract is made the sole base to disqualify the same as Works Contract, while overlooking and ignoring the supply of the other materials which alone is sufficient to qualify the same to be the service of Works Contract. It is not permissible to the department to use one part of the Work Order apparently seeming favourable to the department, while ignoring other parts of the Works Order, which are clearly in favour of the Appellant. Here, the department has made the supply of the sand by M/s. Megha Engineering & Infrastructures Ltd., Hyderabad, as a sole base of disqualifying the service as Works Contract, which is unjust, unfair and beyond the substantial provisions of law. Thus, denying the benefit under Serial No. 29 (h) of the Notification No. 25/2012 ST, is incorrect and unlawful and, accordingly, the service provided by them is exempted under Serial No. 29(h) of said notification.

(ii) That the aforesaid service was provided in respect of Sauni Yojana of Sardar Sarovar Nigam Ltd., which is a "governmental authority" in terms of the Notification No. 02/2014-ST, dated 30.01.2014, which amended the Notification 25/2012-ST, dated 20.06.2012. Hence, service provided in respect of Suauni Yojana is exempted as per Entry Number 12 of Notification 25/2012-ST, dated 20.06.2012.

(iii) That the extended period of limitation has been wrongly invoked under proviso to Section 73(1) of the Act on the grounds of suppression of facts. Show cause notice for subsequent period could not be issued on same set of facts, invoking extended period of limitation in absence of any additional evidence or facts or could not be issued after facts came to knowledge of Department. In this regard, it is submitted that earlier the Show Cause Notice, dated 20.10.2015, was issued was containing the same evidence and facts. Issuance of such Show Cause Notice is not permissible being illegal and unlawful and relied upon case laws of

- (a) Kay Gee Spinners Pvt. Ltd. - 2016 (340) E.L.T. 252 (Tri. - Del.)
- (b) Akshar Chem(I) Ltd - 2013 (292) ELT 550

(iv) That demand is barred by limitation and it deserves to be vacated at once for the reasons that they were registered with the department since 12.1.2008 and their records have been audited two times, prior to present Audit on the basis of which the SCN has been issued.



(v) That it is settled principle of law that when the demand is worked out on the basis of Records & Documents, initially drawn by the tax payer, larger period for recovery is not invocable nor penalty is imposable and relied upon case laws of Narmada Steels Ltd -2007 (217) ELT 469 (Tri. Del) and R.A. Castings Pvt. Ltd. -2009 (237) E.L.T. 674 (Tri. - Del.).

4. Personal Hearing in the matter was scheduled on 30.9.2021 in virtual mode through video conferencing. Shri Sarvesh Gohil, Chartered Accountant, appeared on behalf of the Appellant. He reiterated the submission made in appeal memorandum. He further submitted that he would make additional submission enclosing case laws. Despite considerable lapse of time, no additional submission has been filed. I, therefore, proceed to decide the issue on the basis of grounds raised in appeal memorandum and oral submission made during Personal Hearing.

5. I have carefully gone through the facts of the case, the impugned order, and the grounds raised in Appeal Memorandum. The issue to be decided in the present appeal is whether the impugned order confirming service tax demand of Rs. 63,32,840/- under Section 73(1) of the Act by denying exemption claimed by the appellant, along with interest under Section 75 and imposing penalty under Sections 77 and 78 of the Act is correct, legal and proper or not.

6. On perusal of the records, I find that the Appellant had rendered services to M/s Megha during the period from January, 2015 to June, 2017 and did not pay service tax by claiming exemption under Notification No. 25/2012-ST dated 20.6.2012, as amended. The adjudicating authority, after examining the relevant Work Order, came to conclusion that service rendered by the Appellant to M/s Megha was not covered under 'Works Contract Service' and consequently their case is not covered under Serial Number 29(h) of Notification No. 25/2012-ST dated 20.6.2012, as amended, and the Appellant was held liable to pay service tax.

7. I find that period involved in the present case is from January, 2015 to June, 2017. In negative list regime with effect from 1.7.2012, classification of service under specific category of service was done away with and every service



was liable to service tax unless the same was covered under negative list under Section 66D of the Act or exempted under any notification. The Appellant had claimed exemption from payment of service tax under Serial Number 29(h) of Notification No. 25/2012-ST dated 20.6.2012, as amended, by classifying the services rendered by them to M/s Megha under 'Works Contract Service'. It is, therefore, pertinent to examine the term 'Works Contract Service' defined under erstwhile Section 65(105) of the Act, which is reproduced as under:

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

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

- (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
- (ii) such contract is for the purposes of carrying out, —
  - (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or
  - (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or
  - (c) construction of a new residential complex or a part thereof; or
  - (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or
  - (e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;”

7.1 Further as per Section 65B(54) of the Act effective from 01.07.2012, “works contract” means “a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property.”

7.2 Further, Serial Number 29(h) of Notification No. 25/2012-ST dated 20.6.2012, as amended, under which the Appellant had claimed exemption before the adjudicating authority, is reproduced as under:



“(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;”

8. In backdrop of above provisions, I now examine whether the service rendered by the Appellant to M/s Megha would be covered under ‘Works Contract Service’ and thereby eligible for exemption under Serial Number 29(h) of Notification No. 25/2012-ST dated 20.6.2012, as amended or not. It is pertinent to examine the relevant Work Order issued to the Appellant to ascertain nature of services rendered by the Appellant to M/s Megha. I find that the adjudicating authority has examined relevant Work Order dated 14.12.2012 at Para 5 of the impugned order involved in Show Cause Notice dated 5.4.2017, which is reproduced as under:

|    |           |   |
|----|-----------|---|
| 5. | Materials | (a) All required tools, tackles for above job i.e. blasting equipment and blasting material, Generator, Dewatering Pumps and Excavators, diesel, manpower; labor accommodation and food etc, complete will be in PRW agency scope only, supply of Sand is the Principal Contractor scope. |
|    |           | (b) Principal Contractor will provide the required land for establishment of PRW’s office, store & labour hutments, etc., excluding water & electricity. All establishment charges shall be borne by PRW agency.  |
|    |           | (c) PRW agency to make all working arrangements, manpower/ machinery/ tools & tackles as per Contract agreement specification to complete the work  |
|    |           | (d) PRW agency scope of work includes Earth work excavation of pipe line trenches, Murrum bedding including ramming, watering, refilling of trenches and also rectification work, if any.   |
|    |           | (e) Principal Contractor may issue any consumable materials on request from PRW agency and debit the same from the monthly running bills of PRW agency.   |
|    |           | (f) PRW agency shall have to submit a detailed material requirement for pipes prior to 10 days of work.   |
|    |           | (g) PRW agency scope also covers providing adequate machinery/ manpower till completion of work satisfactory.   |
|    |           | (h) The materials are issued to the PRW agency’s authorized representative only   |
|    |           | (i) The materials issued shall be properly handled and accounted for every day. If any shortage or misuse is noticed the same shall be recovered at double cost. All materials shall be reconciled and accounted for before bill payment and any  |





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|  |  | short fall shall be recovered at double the cost.   |
|  |  | (j) If PRW agency fail to maintain the required progress or cause delay due to any reason, Principal Contractor has right to get the work done at the cost and risk of the PRW agency and the security deposit will be forfeited. |
|  |  | (k) PRW agency scope also covers the liabilities incurred due to damage (like borewells, transmission lines, water pipelines etc.,) at the time of blasting work.   |

8.1 On examining the above, it appears that the Appellant was required to carry out 'Earth work excavation of pipe line trenches, Murrum bedding including ramming, watering, refilling of trenches and rectification work.' as per clause (d) above. For carrying out the said work, the Appellant was required to arrange for required machinery, tools, tackles etc. as per clauses (a), (c) and (g) *supra*. When examining the scope of work to be carried out by the Appellant pursuant to said Work Order, in backdrop of the definition of 'Works Contract Service', it is apparent that said service provided by the Appellant would not be covered under 'Works Contract Service' for the reason that there is no transfer of property in goods involved in the execution of said Work Order on which tax is leviable as sale of goods. The machinery, tools, tackles etc. referred in clauses (a), (c) and (g) *supra* were required to be arranged by the Appellant for providing service and there was no transfer of property to service recipient envisaged in the said Work Order. The Appellant has not brought on record any invoice/ document showing transfer of property to M/s Megha i.e. service recipient. After careful examination of the facts reflected from the records, I am of the opinion that services rendered by the Appellant would not fall under 'Works Contract Service' and consequently, the Appellant is not eligible for exemption from payment of service tax under Serial Number 29(h) of Notification No. 25/2012-ST dated 20.6.2012, as amended.

8.2 I have also examined Work Order dated 3.2.2016 involved in second Show Cause Notice dated 16.4.2019 filed in appeal memorandum and also reproduced at para 29 to 30 of the impugned order. I find that the Appellant rendered service to M/s Megha for laying, joining, testing and commissioning of Pipe Lines pursuant to said work order. As per Para 3 of the said work order, M/s Megha would provide MS Pipe, Air Cushion valve & Stem pipe, joint coating material and paint for stem pipe to Appellant and required manpower, machinery,



*Handwritten signature/initials.*

consumable etc. for completion of work were to be arranged by the Appellant. Thus, in this Work Order also there is no transfer of property in goods involved in the execution of said Work Order on which tax is leviable as sale of goods. The said services rendered by the Appellant to M/s Megha under Work Order dated 3.2.2016 would, therefore, not fall under the category of 'Works Contract Service' and consequently, the Appellant is not eligible for exemption from payment of service tax under Serial Number 29(h) of Notification No. 25/2012-ST dated 20.6.2012, as amended, for the period from April, 2016 to June, 2017.

9. The Appellant has contended that said service was provided in respect of Sauni Yojana of Sardar Sarovar Nigam Ltd., which is a 'governmental authority' in terms of the Notification No. 02/2014-ST, dated 30.01.2014, which amended the Notification No. 25/2012-ST, dated 20.06.2012. Hence, they were eligible for exemption from payment of service tax as per Serial Number 12 of Notification No. 25/2012-ST, dated 20.06.2012. I find that the Appellant had rendered services as a sub-contractor to M/s Megha, who was principal contractor, and not to any government authority. These facts are not under dispute. If M/s Megha had rendered services to government authority, then exemption can be claimed by M/s Megha in terms of Notification No. 25/2012-ST dated 20.6.2012, as amended. However, the Appellant cannot step into shoes of M/s Megha to claim exemption under Serial Number 12 of Notification No. 25/2012-ST, dated 20.06.2012. I, therefore, discard this contention being devoid of any merit.

10. The Appellant has contended that the demand is barred by limitation and it deserves to be vacated at once for the reasons that they were registered with Service Tax Department since 12.1.2008 and their records have been audited two times, prior to present Audit on the basis of which the SCN has been issued.

10.1 I find that wrong availment of exemption by the Appellant under Notification No. 25/2012-ST dated 20.6.2012, as amended, was revealed during audit of the records of the Appellant. Had there been no audit of Appellant's records, such wrong availment of exemption from payment of service tax would have gone unnoticed and hence, ingredients for invoking extended period under proviso to Section 73(1) of the Act exist in the present case. Hence, I hold that the service tax demand raised vide first Show Cause Notice dated 5.4.2017 is not barred by limitation. I rely on the order passed by the Hon'ble CESTAT, Chennai



in the case of Six Sigma Soft Solutions (P) Ltd. reported as 2018 (18) G.S.T.L. 448 (Tri. - Chennai), wherein it has been held that,

“6.5 Ld. Advocate has been at pains to point out that there was no *mala fide* intention on the part of the appellant. He has contended [that] they were under the impression that the said activities would come within the scope of IT services, hence not taxable. For this reason, Ld. Advocate has contended that extended period of time would not be invocable. However, we find that the adjudicating authority has addressed this aspect in para-10 of the impugned order, where it has been brought to the fold that appellant had not at all disclosed the receipt of income in respect of the activities done by them in respect of services provided by them in their ST-3 returns.

6.6 The facts came to light only when the department conducted scrutiny of the annual reports, possibly during audit. In such circumstances, the department is fully justified in invoking the extended period of limitation of five years.”

(Emphasis supplied)

10.2 In view of above, I hold that extended period of limitation under proviso to Section 73(1) of the Act was correctly invoked in Show Cause Notice dated 5.4.2017. I, therefore, uphold confirmation of service tax demand of Rs. 39,93,964/- under Section 73(1) of the Act. Since, the demand is upheld, it is the natural consequence that confirmed demand is required to be paid along with interest. I, therefore, uphold impugned order for recovery of interest under Section 75 of the Act.

11. The Appellant has contended that extended period of limitation under proviso to Section 73(1) of the Act was wrongly invoked for second Show Cause Notice dated 16.4.2019 on the grounds of suppression of facts. Show cause notice for subsequent period could not be issued invoking extended period of limitation on same set of facts in absence of any additional evidence or facts or could not be issued after facts came to knowledge of Department.

11.1 I find that second Show Cause Notice dated 16.4.2019 was issued under proviso to Section 73(1) of the Act by invoking extended period of limitation on the grounds of suppression of facts. It is settled position of law that when first Show Cause Notice was issued invoking extended period of limitation, the second Show Cause Notice for subsequent period cannot be issued invoking extended period of limitation on same set of facts. In the present case, after issuance of first Show Cause Notice to the Appellant on 5.4.2017, it was well within the knowledge of the Department that the Appellant was not discharging service tax in respect of services rendered to M/s Megha. The adjudicating authority has not brought on records if there was any change in facts in second Show Cause



*dy*

Notice. Hence, when second Show Cause Notice was issued to the Appellant on 16.4.2019, extended period of limitation under proviso to Section 73(1) of the Act cannot be invoked. However, I find that the second Show Cause Notice was issued within normal period of limitation of 30 months from the relevant date prescribed under Section 73(1) of the Act. The Show Cause Notice dated 16.4.2019 was issued covering the period from April, 2016 to June, 2017, which is within 30 months from the relevant date for issuance of Show Cause Notice under normal period of limitation. I, therefore, uphold confirmation of service tax demand of Rs. 23,38,876/- under Section 73(1) of the Act. Since, the demand is upheld, it is natural consequence that confirmed demand is required to be paid along with interest. I, therefore, uphold impugned order for recovery of interest under Section 75 of the Act.

12. Now, coming to imposition of penalty under Section 78 of the Act. I have upheld invocation of extended period of limitation on the grounds of suppression of facts in the first Show Cause Notice dated 5.4.2017 as per findings *supra*. Under the circumstances, imposition of penalty under Section 78 of the Act is mandatory, as has been held by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.). In the said case, it has been held by the Apex Court that when there are ingredients for invoking extended period of limitation for demand of duty, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgment applies to the facts of the present case. I, therefore, uphold penalty of Rs. 39,93,964/- imposed under Section 78 of the Act in respect of first Show Cause Notice dated 5.4.2017. However, penalty imposed under Section 78 of the Act in respect of second Show Cause Notice dated 16.4.2019 is not sustainable since extended period of limitation under proviso to Section 73(1) is not invocable in subsequent Show Cause Notice, as held by me above. I, therefore, set aside penalty of Rs. 23,38,876/- imposed under Section 78 of the Act in respect of second Show Cause Notice dated 16.4.2019. It is observed that Show Cause Notice dated 16.4.2019 had proposed imposition of penalty under Section 76 of the Act also but the adjudicating authority refrained from imposing penalty under Section 76 on the grounds that simultaneous penalty under Sections 76 and 78 are not imposable. Since, penalty under Section 78 in respect of Show Cause Notice dated 16.4.2019 is not imposable as held by me *supra*, the matter is remanded to the adjudicating authority for limited purpose of examining imposition of penalty under Section 76 of the Act in respect of Show Cause Notice dated



16.4.2019. Needless to mention that de novo order shall be passed on this issue after adhering to principles of natural justice.

13. Regarding penalty of Rs. 20,000/- imposed under Section 77(2) of the Act, I find that the adjudicating authority has imposed penalty on the grounds that the Appellant had failed to pay service tax in accordance with the provisions of Section 68 of the Act. I concur with the findings of the adjudicating authority and uphold imposition of penalty of Rs. 20,000/- under Section 77(2) of the Act.

14. In view of above, I partially allow the appeal and set aside the impugned order to the extent of imposition of penalty of Rs. 23,38,876/- under Section 78 of the Act. The remaining portion of the impugned order is upheld. The imposition of penalty under Section 76 to be decided in *de novo* proceedings.

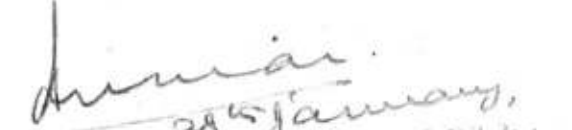
15. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

15. The appeal filed by the Appellant is disposed off as above.

स्त्यापित,



विपुल शाह  
संश्लेषक (अपील्स)

  
28 January 2022  
(AKHILESH KUMAR)  
Commissioner (Appeals)

By RPAD

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| To,<br>M/s Jadeja Associates<br>Main Bazar,<br>Village Jhakar,<br>Taluka : Lalpur,<br>District :Jamnagar. | सेवा में,<br>मेसर्स जडेजा एसोसिएट्स<br>मुख्य बाजार,<br>ग्राम झाकर,<br>तालुका: लालपुर,<br>जिला : जामनगर। |
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प्रतिलिपि :-

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



