



:: आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर/कीरकेन्द्रीय 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



सत्यमेव जयते

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रजिस्ट्रार/राजकोट, गुजरात

DIN-20220464SX000061676A

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/ Date
	V2/57/BVR/2021	01/AC/CGST/BVR- 3/DIV/2021-22	30/09/2021

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

BHV-EXCUS-000-APP-001-2022

आदेश का दिनांक/ Date of Order:	27.04.2022	जारी करने की तारीख / Date of issue:	28.04.2022
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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,

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

M/s. Mohini Construction Co., Satodipara, Chalala Amreli-365601. Mobile no.-
9824539774

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

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण सत्यांकन 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 बहाल गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवाली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, न्याय की मांग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम 5 लाख रुपये या 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 नियमवाली, 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, न्याय की मांग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम 5 लाख रुपये या 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 should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than fifty 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 Asst. 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 नियमवाली, 1994, के नियम 9 (2) एवं 9 (2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी।
The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in 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.
- (iii) 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, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- (i) धारा 11 डी के अंतर्गत रकम
 - (ii) सेनबेट जमा की ली गई गलत राशि
 - (iii) 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 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 कोपनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणवाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपूरुक्त के अंतर्गतवर 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 मंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक मंडार गृह से दूसरे मंडार गृह पारगमन के दौरान, या किसी मंडार गृह में या मंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी मंडार गृह में माल के नुकसान के मामले में।
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है।
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है।
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्यूटी क्रेडीट 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 निर्यात की गई सारीख अथवा समायोजिधि 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 उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संशेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आवेदन व अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। 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 OI 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 आवेदों का समावेश है तो प्रत्येक मूल आवेद के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पत्रा 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 आवेदन एवं स्वयं आवेदन 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 वर्णित एवं अन्य संबंधित 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 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. Mohini Construction Co., Chalala (hereinafter referred to as "Appellant") has filed Appeal No. V2/57/BVR/2021 against Order-in-Original No. 01/AC/CGST/BVR-3/DIV/2021-22 dated 30.09.2021 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, CGST, Division-3, Bhavnagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Appellant was engaged in providing construction service and was registered under the Finance Act, 1994("the Act"). Proceedings were initiated by the officers of Directorate General of Goods and Service Tax Intelligence, Vapi Unit (DGGI) against certain contractors (including the Appellant), on the grounds that these contractors were not paying service tax on services provided to various Government authorities. During the course of investigation, it appeared that the Appellant had not paid service tax to the tune of Rs. 8,84,982/- in respect of some contracts/works. Accordingly, a SCN dated 20.06.2020 was issued to the Appellant proposing as to why:-

- (i) Service Tax (including SBC & KKC) amounting to Rs. 8,84,892/- should not be recovered under the provisions of Section 73(1) of the Act and amount of Rs. 98,982/- paid by the Appellant should not be appropriated against the above amount;
- (ii) Interest on above demand should not be recovered under Section 75 of the Act and amount of Rs. 41,954/- already paid by the Appellant should not be appropriated;
- (iii) Penalty should not be imposed under Section 78(1) of the Act; and amount of Rs. 11,001/- already paid should not be appropriated;
- (iv) Penalty should not be imposed under Section 77(1) of the Act;
- (v) Penalty should not be imposed under Section 70 of the Act read with Rule 7C of Service tax Rules, 1994.

2.1 The adjudicating authority vide the impugned order, after considering the submission made by the Appellant, has confirmed the proposal made in the SCN.

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

- (i) They had provided services during the period from 01.04.2015 to 30.06.2017 to the State Government and entered in agreement with the Executive Engineer, R & B Panchayat Division, Surat (Agreement No. B-2/169/2015-16



dated 01.09.2015 (for 72 units)) & B-2/209/2015-16 dated 11.09.2015 (for 88 units) and District Panchayat, Valsad (Agreement No. BSD/ANG/2015-16 dated 07.11.2016 to construct a low-cost house for 27.58 sq.m (3.81x7.27) under Halpati Aawas Yajna;

- (ii) Their works are fully exempted under Notification No.25/2012-Service Tax dated 20.06.2012 as amended by Notification No. 09/2016-Service Tax dated 01.03.2016 (Sr. No.14);

4. Personal hearing in the matter was held through virtual mode on 25.03.2022. It was attended by Shri Pradyumansinh M. Rathod, Authorized Representative of the Appellant. He re-iterated the submission made in appeal memorandum. He also stated that the firm has constructed houses under low cost housing scheme of Government of Gujarat and they were eligible for exemption under the notification.

5. I have carefully gone through the facts of the case, the impugned order and the written and oral submissions made by the Appellant. The issue to be decided in the case is whether the impugned order confirming service tax demand of Rs. 8,84,892/- under Section 73 of the Act, along with interest under Section 75 and imposing penalty under Sections 77 and Section 78 of the Act and also appropriating the amount already paid by the Appellant, is correct, legal and proper or not.

6. Ongoing through the case records, I find that the demand has been confirmed in respect of following works carried out by the Appellant:

(Amount in Rs.)

Sr. No	Work Order No. & Date	Amount involved	Rate of abatement	Value of Service	Rate of Tax	Service Tax recoverable
1.	B-2/209/2015-16 dtd.11.09.2015 (Various Awas at Bardoli Taluka (88-units))	74,47,810/-	60%	29,79,124/-	14.5%	4,31,973/-
2.	B-2/169/2015-16 dtd.01.09.2015 Various Awas at Bardoli Taluka (72-units)	60,99,339/-	60%	24,39,736/-	14.5%	3,53,762/-
3.	VZF/230007247 (under RCM S.Tax on 50% of value)	8,93,245/-	60%	1,78,649/-	14.5%	25,904/-
4.	BSD/ANG/2015-16 dated 07.11.2016 (Construction of Anganwadi at various village of Borsad Taluka)	12,22,381/-	60%	4,88,952/-	15%	73,343/-
Total Service Tax						8,84,982/-



6.1. It is observed that the Appellant had not disputed their liability in respect of work orders mentioned at Sr. No. 3 & 4 of the table above and have paid their liability along with interest and penalty, which has been appropriated in the impugned order by the adjudicating authority. The Appellant had paid the applicable service tax amount of Rs. 25,904/- in respect of Work Order No. VZF/230007247 (for services provided to M/s. Reliance Industries Limited) and had furnished copy of Challan and ST-3 returns to the investigating authority (Para 5 of the SCN). It is further observed that the Appellant has also paid Rs. 1,25,938/- (Service Tax of Rs. 73,343/- + Interest Rs. 41,954/- + Penalty Rs. 11001/-) in respect of Work Order No. BSD/ANG/2015-16 dated 07.11.2016 (Construction of Anganwadi at various village of Borsad Taluka) before the issuance of SCN (Para 9.2 of the SCN). I find that the demand in respect of these two work orders are not contested in the present proceedings.

6.2. As regards the two Work Orders mentioned at Sr No. 1 & 2 of the table above, I find that the Work Order No. B-2/209/2015-16 dated 11.09.2015 and No. B-2/169/2015-16 dated 01.09.2015 (herein after referred to as "the impugned work orders") have been allotted by the concerned Government authority to the Appellant for construction of 88 and 72 units of various Awas respectively at Bardoli Taluka. The Appellant has, in the grounds of appeal, claimed exemption under Serial No. 14 of the Mega Exemption Notification No. 25/2012-Service Tax dated 20.06.2012 as amended. During the personal hearing also, the authorized representative of the Appellant had stated that it has constructed houses under the low cost housing scheme of Government of Gujarat and it was eligible for exemption. I further find that the Appellant, in their submission before the adjudicating authority, had claimed that awas / residential units constructed under the impugned work orders are independent units situated at different places without common facilities and hence, would not be covered under residential complex. The Appellant had, before the adjudicating authority, also claimed that it was also eligible for exemption under clause (c) and (ca) of the Mega Exemption Notification. They have also relied upon the Hon'ble Tribunal's judgment dated 13.03.2020 in the case of Shri Prakash Wadhvani Vs. Commissioner of Central Excise, Customs and Service Tax, Bhopal (Service Tax Appeal No. 52243 of 2016 [DB]) in support of their contention.

6.3 The relevant provisions under Serial No. 14 of the Mega Exemption Notification No. 25/2012 - ST dated 20.06.2012, as amended by Notification No. 9/2016 - ST dated 01.03.2016, are reproduced below:-

14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-



- (a) *railways, excluding monorail and metro; Explanation.-The services by way of construction, erection, commissioning or installation of original works pertaining to monorail or metro, where contracts were entered into before 1st March, 2016, on which appropriate stamp duty, was paid, shall remain exempt.*
- (b) *a single residential unit otherwise than as a part of a residential complex;*
- (c) *low- cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;*
- (ca) *low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under:*
- (i) *the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;*
- (ii) *any housing scheme of a State Government.*
- (d) *post- harvest storage infrastructure for agricultural produce including a cold storages for such purposes; or*
- (e) *mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages;*

6.4. I find that the Appellant has contended in the appeal memorandum that these two work orders pertained to construction of low cost houses for 27.58 square metres under Halpati Awas Yojana and has submitted copies of plan with the memorandum. The adjudicating authority in Para 8.1. of the impugned order held that the appellant had not furnished documentary evidences showing that the residential units constructed by them were under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India for claiming exemption under Entry No. 14 (c) of the above Notification. I find that the impugned order was passed without affording the appellant any opportunity for personal hearing. The appellant was granted three dates but there is no record for any request for adjournment. Further, there is nothing on record to suggest that the documents submitted in appeal memorandum were produced before the adjudicating authority. Hence, I find that the impugned order has been passed in violation of principle of natural justice. It would be in the interest of justice that the matter is remanded to the adjudicating authority to examine the matter afresh after according the appellant to represent their case as part of natural justice. The appellant is also directed to submit the documents relevant to the case before the adjudicating authority so that their claim for exemption is examined.



7. I find that there are factual discrepancies in the impugned order. The adjudicating authority, at Para 10 of the impugned order, has observed that the Appellant had paid service tax of Rs. 25,904/- and Rs. 73,343/- so, the total amount paid by the Appellant works out to Rs. 99,247/-. Whereas, the amount appropriated against the confirmed service tax demand is Rs. 98,852/- only. Further, the remaining demand mentioned at Para 10 of the impugned order is Rs. 7,85,735/-, whereas in the order portion it is mentioned as Rs. 7,86,130/-. It also appears that the adjudicating authority has wrongly appropriated the penalty amount of Rs. 11,001/- paid by the Appellant @15% of Rs. 73,343/- in respect of Work Order No. BSD/ANG/2015-16 dated 07.11.2016, against the penalty of Rs. 7,86,130/- imposed under Section 78 of the Act, in respect of the impugned work orders. I find that the above factual discrepancies are also required to be verified and corrected by the adjudicating authority in de-novo proceedings.

8. In view of the above, I set aside the impugned order to the extent of confirming the demand of service tax in respect of the impugned work orders with a direction to decide the matter afresh as per the findings recorded at Para 6.4. and 7 above. The appellant is also directed to produce necessary documents before the adjudicating authority/

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

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

सत्यापित / Attested



Ketan Dave
अधीक्षक (अपील)
Superintendent (Appeal)

(AKHILESH KUMAR)
Commissioner (Appeals)

27th April, 2022

By RPAD

To
M/s. Mohini Construction Co.
Chalala, Dist. Amreli.

M/s. मोहिनी कंस्ट्रक्शन कंपनी
चलाला, जिला, अमरेली

प्रति:-

- 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, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) सहायक आयुक्त, सीजीएसटी मंडल-3, भावनगर, को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फाइल।

