

	<b>::आयुक्त (अपील) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::</b> <b>O/O THE COMMISSIONER (APPEALS), GST &amp; CENTRAL EXCISE</b>	 सत्यमेव जयते
	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 Tele Fax No. 0281 - 2477952/2441142 Email: commrapp13-cexamd@nic.in	

DIN20221164SX000000A74B

क	अपील / फाइल संख्या/ Appeal / File No. V2/30/BVR/2022	मूल आदेश सं / O.I.O. No. BHV-EXCUS-000-ADC-VM-017- 2021-22	दिनांक/Date 15-02-2022
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अपील आदेश संख्या (Order-In-Appeal No.):

**BHV-EXCUS-000-APP-095-2022**

आदेश का दिनांक /  
Date of Order:  
11.11.2022

जारी करने की तारीख /  
Date of issue: 29.11.2022

श्री शिव प्रताप सिंह, आयुक्त (अपील), राजकोट द्वारा पारित /  
Passed by Shri Shiv Pratap Singh, 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. Anilkumar Madhavlal Parmar, Office No. 1016, Shivalik Satyamev, Near Vakil Saheb Bridge, Bopal, Ahmedabad - 380058**

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

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

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, की की जानी चाहिए /  
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 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, जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयंन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /  
The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/- Rs.10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

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B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवली, 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, जहाँ सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयंन 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. 1,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs, Rs.5,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

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- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति 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.
- (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, अर्थात् 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 बलत राशि  
(iii) सेनबेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम  
- बर्तते यह कि इस धारा के प्रावधान वित्तीय (सं- 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा। / For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores, Under Central Excise and Service Tax, "Duty Demanded" shall include :  
(i) amount determined under Section 11 D;  
(ii) amount of erroneous Cenvat Credit taken;  
(iii) amount payable under Rule 6 of the Cenvat Credit Rules  
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार को पुनरीक्षण आवेदन :  
**Revision application to Government of India:**  
इस आदेश को पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाता 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 चरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ब्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आवेदन को आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं- 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समाप्तोपदिधि 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 संश्लेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साध्य 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 O.I.O 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।  
जहां संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000-/- का भुगतान किया जाए।  
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त दंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various 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 स्वगन 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 संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, 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).



**:: अपील आदेश / ORDER-IN-APPEAL ::**

M/s. Anilkumar Madhavlal Parmar, Prop. Ambica Stone Industries, A Wing's Block No. 10, Riddhi Siddhi Apartment, Vadipara Chowk, Dist. Surendranagar, Gujarat (hereinafter referred to as "Appellant") has filed Appeal No. V2/30/BVR/2022 against Order-in-Original No. BHV-EXCUS-000-ADC-VM-017-2021-22 dated 15.02.2022 (hereinafter referred to as 'impugned order') passed by the Additional Commissioner, Central GST, Bhavnagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that on the basis of data/ details provided by the Income Tax Department, various Income Tax Assessee, who declared in their Income Tax Returns for financial year 2014-15 were found to have earned income by providing services classified under various service sectors. The Income Tax Department had also provided data of Form 26AS showing details of total amount paid/ credited under Section 194C, 194H, 194I & 194J of the Income Tax Act, 1961 in respect of various persons which depicted that such persons had earned income from providing services. The said data also contained the details of the Appellant who had not obtained Service Tax Registration under the Finance Act, 1994 (hereinafter referred to as 'the Act'). The Jurisdictional Superintendent, issued letter dated 21.08.2020 through email on 24.08.2020 and summons dated 09.09.2020 to the Appellant calling for the information/ documents for the financial year 2014-15. The Appellant vide letter dated 02.09.2020 submitted the documents as per which it appeared that the Appellant had income of Rs.9,90,36,814/- in the name of contract receipt shown in P&L account. Since the Appellant has not clarified the reason for non payment of service tax on contract income, a summon dated 09.09.2020 was issued to them but no reply/ response was given by them and hence the Service Tax was determined on the basis of data/details provided by the Income Tax department.

3. The above investigation culminated into Show Cause Notice dated 22.09.2020 proposing to demand Service Tax of Rs. 1,22,40,950/- including all cesses under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act') by invoking extended period alongwith interest under Section 75 of the Act from the Appellant. It was also proposed to impose penalty under Section 77(1)(a), 77(2), 77 (1)(c) and Section 78 of the Act.

4. The adjudicating authority vide the impugned order who confirmed Service Tax demand of Rs. 1,22,967/- under Section 73(1) by invoking extended period of 5 years along with interest under Section 75 of the Act. The adjudicating authority imposed penalties of Rs. 10,000/- each under Section 77(1)(a) and Section 77(2) of the Act. The penalty of Rs. 1,22,967/- was also



*Anil*

imposed upon the Appellant under Section 78 of the Act.

5. Being aggrieved, the Appellant has preferred the present appeal on 28.04.2022 on various grounds as stated below:

(i) The SCN is issued without giving pre-show cause notice consultation to the Appellant in terms of instructions F. No. 1080/09/DLA/MISC/15 dated 21.12.2015. They rely on case of Dharmashil Agencies Vs. UOI Civil Application No. 8255 of 2019, Back Office IT Solutions Pvt. Ltd. Vs. UOI & Ors. 2021 (4) TMI 520, Amadeus India Pvt. Ltd. Vs Pr. Commissioner of CEX, Service Tax and Central Tax Commissionerate - 2019 (5) TMI 669. Thus the impugned order confirming demand, interest and penalties is liable to be dropped.

(ii) The demand of service tax is time barred as the same has been served beyond a normal period of thirty months in terms of provisions of Section 73(1) of the Act and there was no fraud or collusion or wilful mis-statement or suppression of acts, or contravention of any of the provisions of the Act or of the Rules made thereunder with an intent to evade payment of service tax. The SCN is based on income tax data/returns, which was filed on 17.10.2015 and the SCN is issued on 22.09.2020 i.e. almost after period of five years from the date of such return. The data was available with the department from the concerned year in which return is filed and figures are taken from Income Tax Return without any variation, thus there cannot be any fraud, collusion or wilful misstatement as the I. T. return was available for verification. They rely on decision of Hon'ble CESTAT, Allahabad Bench in Tax Appeal No. 70707 of 2018 (DB) in case of M/s. Pappu Crane Service, Apex Electricals (P) Ltd. Vs. UOI - 1992 (61) ELT 413 (Guj.), Pahwa Chemicals P. Ltd. Vs. CCE, Delhi - 2005 (189) ELT 257 (S.C.), CCE Vs. Chemphar Drugs & Liniments - 1989 (40) ELT 276 (SC), NRC Ltd. Vs. CCE, Thane-I - 2007 (5) STR 308 (Tri.-Mum), Cosmic Dye Chemical Vs. Collector of C.Ex., Bombay - 1995 (75) ELT 721 (SC), Board Circular No. 5/92-CX.4 dated 13.10.1992 reiterated in Circular No. 1053/02/2017-CX dated 10.03.2017, Vir Teja Roadlines Vs. Commissioner of C.Ex., Ahmedabad - 2012 (27) S.T.R. 290 (Tri.-Ahmd.). They denied the charges of suppression and the demand is barred by limitation and requested to drop the demand.

(iii) The SCN is time barred as is not covered by extended period of limitation of 5 years even under the Taxation and other laws (Relaxation and amendment of certain provisions) Act, 2020. The 5 years period for issuing show cause notice for 1<sup>st</sup> half of F.Y. 2014-15 had already been expired on 13.11.2019 and hence the show cause notice is time barred at least for the period from 01-04-2014 to 30.09.2014. The service tax demand of Rs. 1,22,967/- is on ballast income of Rs. 9,94,878/- which is in nature of labour income. Out of the said income, income of Rs. 8,86,539/- is pertaining to the period from 01-04-2014 to 30-09-2014 and rest of income of Rs. 1,08,339/- is pertaining to period from 01-10-2014 to 31-



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03-2015. Hence, no demand can be confirmed on income of Rs. 8,86,539/- but can be confirmed on income of Rs. 1,08,339/- only which comes to Rs. 13,391/-.

(iv) As per show cause notice, the Appellant received income from providing services classified under Section 194C, 194H, 194I and 194J of the Income Tax Act. These section of Income Tax Act are meant for providing deduction of tax at source on certain payment and not for classifying services. SCN has assumed gross receipts as value of taxable services liable to service tax without cogent material. The SCN is issued based on assumption and presumption and no demand can be confirmed based on such SCN and requested to drop the demand. They rely on Indo Nippon Chemicals Co. Ltd. Vs. Commissioner of C.Ex. Vadodara - 2009 (16) S.T.R. 639 (Tri.- Ahmd.), Creative Travel Pvt. Ltd. V. CCE - 2016(41) S.T.R. 134 (Tri.-Del.), Commissioner of Service Tax Ahmedabad Vs. Purni Ads. Pvt. Ltd. - 2010 (19) S.T.R. 242 (Tri.-Ahmd.), Canny Detective & Security Services Vs. Commr. Of C.Ex. Ahmedabad - 2010 (20) S.T.R. 695 (Tri. - Ahmd.).

(v) No fresh proceedings can be initiated after introduction of GST as per the provisions of Section 174 (2)(e) of the CGST Act, 2017. Confirming demand based on Show Cause Notice which is issued in violation of Board Circular No. 1053/2/2017-CX. Dated 10.03.2017, is not legal and proper. The Show Cause Notice is not legal or proper and no demand can be confirmed being not sustainable. The penalties imposed under various sections are confirmed without making justification/discussion in the Show Cause Notice or Order-In-Original which is in violation of Board Circular dated 10.03.2017 supra. Thus the impugned order confirming demand, interest and penalties is liable to be dropped. The penalty under Section 78 of the Act based on Show Cause Notice does not propose benefit of 15% reduced penalty under first proviso to Section 78 of the Act.

6. Personal hearing in the matter was held on 20.10.2022. CA Shri Keyur Radia appeared for personal hearing. He reiterated the contentions in the grounds of appeal. He submitted that the demand is time barred even after invoking of extended period. He also submitted that pre-Show Cause Notice consultation was mandatory in this case, which was not allowed, making the Show Cause Notice defective. Therefore, he requested to set aside the Order-In-Original and grant consequential relief.

7. I have carefully gone through the case records, Show Cause Notice, impugned order and appeal memorandum filed by the Appellant. The limited issue to be decided in the case on hand is that whether the Appellant is liable to pay service tax on labour work for ballast lying activity provided to Western Railways or not.

8. I find that the Show Cause Notice dated 22.09.2022 has been issued for period 2014-15. I find that as per proviso to Section 73(1) of Finance Act,



*Keyur*

1994, where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of -

- (a) Fraud; or
- (b) Collusion; or
- (c) Wilful mis-statement; or
- (d) Suppression of facts; or
- (e) Contravention of any of the provisions of this Chapter or the rules made thereunder with intent to evade payment of service tax,

show cause notice is required to be served within five years from the relevant date. As per Section 73(6) of Finance Act, 1994 'relevant date' means-

6) For the purposes of this section, "relevant date" means, -

(i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid -

(a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;

(b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

(c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;

(ii) in a case where the service tax is provisionally assessed under this Chapter or the rules made thereunder, the date of adjustment of the service tax after the final assessment thereof;

(iii) in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund.]

In the present case, the appellant has not filed any return and hence the relevant date is the last date on which such return was required to be filed. For the period from April 2014 to September 2014 the ST-3 return for the said period was required to be filed by 25<sup>th</sup> of October 2014. As such, the show cause notice was required to be served latest by 24<sup>th</sup> of October 2019, but in the present case notice was served on 22.09.2020 and hence the demand for the period from April 2014 to September 2014 is clearly hit by limitation of time under Section 73 ibid.

9. I find that ballast income of Rs. 9,94,878/- is in respect of labour work on account of arranging ballast. Out of total income of Rs. 9,94,878/-, income of Rs. 8,86,539/- is pertaining to the period 01.04.2014 to 30.09.2014 and therefore, even considering the extended period of limitation alongwith the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions), Act, 2020, the demand pertaining to 01.04.2014 to 30.09.2014 is time barred. The remaining amount of Rs. 1,08,339/- for bill no. 6 dated 15.02.2015 is well within time and service tax is leviable thereon. Thus, I hold that the Appellant is liable to pay service tax on taxable value of Rs. 1,08,339/- which comes to Rs.



*Am*

13,391/- only and same is confirmed herewith along with interest.

10. I confirm the penalty of Rs. 13,391/- under Section 78 of the Act. However, I extend the benefit of second proviso to Section 78 of the Act according to which if the Service Tax and interest payable is paid within thirty days from the date of communication of this order, the amount of penalty liable to be paid by such person under Section 78 shall be twenty-five percent of the tax so determined.

11. In view of the facts and circumstances of the case, I reduce penalty to Rs. 5,000/- under Section 77(1)(a) of the Act and Rs. 5,000/- under Section 77(2) of the Act, instead of Rs. 10,000/- each imposed by the lower Adjudicating Authority. I uphold the impugned order in respect of the demand for the period October-2014 to March-2015 and partially allow the appeal filed by the Appellant to the extent of holding the demand for the period April-September, 2014 being barred by limitation of time limit.

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

12. The appeal filed by Appellant is disposed off as above.

**सत्यापित / Attested**

*[Signature]*

**Superintendent**

**Central GST (Appeals)**  
**Rajkot**

*[Signature]*  
11-11-2022

(शिव प्रताप सिंह)/(Shiv Pratap Singh)

**आयुक्त (अपील)/Commissioner (Appeals)**  
**Rajkot**

By R.P.A.D.

To,  
M/s. Anilkumar Madhavlal Parmar,  
Prop. Ambica Stone Industries, A  
Wing's Block No. 10, Riddhi Siddhi  
Appartment, Vadipara Chowk, Dist.  
Surendranagar, Gujarat

सेवा में,  
मे. अनिलकुमार माधवलाल परमार, अंबिका  
स्टोन इंडस्ट्रीज़, ए विंग, ब्लॉक नंबर 10, रिद्धि  
सिद्धि अपार्टमेंट, वादीपरा चोक, सुरेन्द्रनगर,  
गुजरात।

**प्रतिलिपि :-**

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) अपर/संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर को आवश्यक कार्यवाही हेतु।
- 4) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मण्डल सुरेन्द्रनगर को आवश्यक कार्यवाही हेतु।
- 5) गाई फ़ाइल।

