



::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

Tele Fax No. 0281 - 2477952/2441142 Email: commrappl3-cexamd@nic.in

रजिस्टर्ड डाक ए.डी. द्वारा

DIN-20221264SX000044454B

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/Date
	V2/33/BVR/2022	BHV-EXCUS-000-JC-PK- 010-2021-22	15-02-2022

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

**BHV-EXCUS-000-APP-097-2022**

आदेश का दिनांक / Date of Order:	11.11.2022	जारी करने की तारीख / Date of issue:	02.12.2022
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श्री शिव प्रताप सिंह, आयुक्त (अपील्स), 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. Jagdish Borewell co.,, Junagadh Road, Opp. Water Tank, Bagasara-365440 Amrell**

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 अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 88 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 उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर० के० पुरम, नई दिल्ली, को की जानी चाहिए। /

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेड) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 360016 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-360016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग, ब्याज की माँग 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 रजिस्टार 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। 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) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग, ब्याज की माँग 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 रजिस्टार 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। 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 upto 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-



- (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 जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना 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) सेनवेट जमा की ली गई गलत राशि  
(iii) सेनवेट जमा नियमावली के नियम 8 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा। /

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,

Under Central Excise and Service Tax, "Duty Demanded" shall include :

- (i) amount determined under Section 11 D;  
(ii) amount of erroneous Cenvat Credit taken;  
(iii) amount payable under Rule 6 of the Cenvat Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

- (C) **भारत सरकार 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 प्रथमपरतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, 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, जहाँ 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 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 ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं। /

Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

- (v) उपरोक्त आवेदन की दो प्रतियाँ प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।

जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 तथा के हतिय हए भी को लिखा पढ़ा 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-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। /

One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य 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 दायित्व 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. Jagdish Borwell Co., Station Road, Bagasara, Dist.: Amreli, Gujarat-365440 (hereinafter referred to as "Appellant") has filed present Appeal against Order-in-Original No. BHV-EXCUS-000-JC-PK-010-2021-22 dated 15.02.2022 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST, Bhavnagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Income Tax Department provided data/ details of various Income Tax payers, who in their Income Tax Returns for financial year 2014-15, 2015-16 & 2016-17 declared to have earned income by providing services classified under various service sectors. The Income Tax Department 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 like contract, commission or brokerage, renting of movable/ immovable property, Technical or Professional service etc. 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, vide letters dated 21.07.2020 & 28.07.2020 to the Appellant called for the information/ documents viz. Copies of I.T. Returns, Form 26AS, Balance Sheet (incl. P & L account), VAT/Sales Tax returns, Annual Bank Statement, Contracts/ Agreements entered with the persons to whom services provided etc. No reply/ response was received from the Appellant and the Service Tax was determined on the basis of data/ details provided by the Income Tax department and culminated into Show Cause Notice dated 04.09.2020 invoking extended period of 5 years proposing to demand Service Tax of Rs. 89,18,607/-, including all cesses under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act') with interest under Section 75 of the Act, and proposing to impose penalty under Section 77(1)(a), 77(2), 77 (1)(c) and Section 78 of the Act.

3. The adjudicating authority vide the impugned order confirmed Service Tax demand of Rs. 80,89,579/- under Section 73(1) invoking

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extended period of 5 years along with interest under Section 75 of the Act and dropped the remaining demand of Rs. 8,29,028/-. The adjudicating authority imposed penalties of Rs. 10,000/- each under Section 77(1)(a), Section 77(2) and Section 77(1)(c) of the Act. The penalty of Rs. 80,89,579/- was also imposed upon the Appellant under Section 78 of the Act.

4. The Appellant has preferred the present appeal on 04.05.2022 alongwith application for condonation of delay on various grounds mainly as stated below:

(i) The adjudicating authority finds that drilling of borewell/ tubewell at agricultural farm is a construction service and not a service directly related to agricultural operations as enumerated in Section 66D(1) of the Act. The adjudicating authority placed reliance on Sr. No. 54 of the Notification No. 12/2017-CT(Rate). As per the said Notification the process carried out is including and not limited to the activities mentioned and all activities essential for the purpose of agriculture operations are exempt from payment of service tax. Drilling of borewell and thereby taking the water from borewell is very much essential for the agricultural activity and therefore, reading the words in the Notification in narrow sense is not acceptable and legitimate benefit cannot be denied to the appellant. The finding that activity carried out by the appellant at the agricultural farm is construction activity is baseless.

(ii) The adjudicating authority relied on the decision of Tamil Nadu Authority of Advance Ruling given in the GST regime which is not acceptable as GST Flyer on "Advance Ruling Mechanism in GST" issued by the Board clarifies that an advance ruling is not applicable to similarly placed other taxable persons in the state and is only limited to the person who has applied for an advance ruling. Thus, decision relied upon by the adjudicating authority cannot be applied to the Appellant.

(iii) The Appellant relied on clarification issued from F. No. 354/35/2014-TRU dated 04.03.2014 which states that the Borewell services are excluded from the tax liability since it is covered in the scope of Negative List Entry under Section 66D(d)(i) of the Act. Further the appellate authority of advance ruling (AAAR) clarified that for the letter presented under the erstwhile service tax regime which was adopted by the GST regime too, the question of classifying the bore well activity under the list was still under discussion and not decided.

(iv) The Appellant rely on the judgment of M/s. Pasupatinath Tubewells Vs. Commissioner of Central Excise, Udaipur by CESTAT, Principal Bench, New Delhi in Service Tax Appeal No. 50424 of 2021 (SM), Final Order No. 50278/2022 dated 07.03.2022, wherein it has been held that the activity of drilling of borewells is covered in the negative list, which is exempt from tax.

(v) With regard to penalty under Section 78 of the Act, the Appellant contested that they have not suppressed anything from the Department who obtained the information from the statutory records of Income Tax Department. They were under reasonable belief that the service provided by them is not liable to service tax as per Section 66D(d)(i) of the Act and clarification issued by letter



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F. No. 354/35/2014-TRU dated 04.03.2014 and therefore, there is no malafide intention on the part of the Appellant with intent to evade payment of service tax. Their case is fit to invoke provisions of Section 80 of the Act and they rely on the decision of M/s. Multi Trake Network Vs. CST Delhi.

(vi) With regard to penalty under Section 77 for failure to obtain registration, failure to assess the tax liability and failure to furnish information, the Appellant stated that they were not liable to service tax and therefore, they are not liable to obtain registration or to assess the tax liability. They have already filed the statutory returns with the Income Tax Department which was provided to the Department. They have never received letter calling the documents and there was no intention to not to submit the same and they have submitted all the documents at the time of adjudication. Therefore, they are not liable for any penalty under Section 77 of the Act. They rely on the judgment in the case of Commissioner of C.Ex., Tirunelveli Vs. Global Software Solutions (P) Ltd. - 2011 (24) S.T.R. 707 (Tri.-Chennai, Tamilnadu Housing Board Vs. Collector of Central Excise, Madras - 1994 (74) ELT 9 (SC).

5. Personal hearing in the matter was held on 21.10.2022 which was attended by Shri Rishi Upadhyay, CA, wherein he reiterated the submissions made in the appeal. He submitted that the service of laying borewells, being closely connected with agricultural activity, is exempted being under negative list vide Section 66 D (d)(i). He referred to latest tribunal order in Service Tax Appeal No. 50424 of 2021 (SM) dated 07.03.2022 in case of M/s Pashupati Nath Tubewells. Relying upon the same he requested to set aside the Order-In-Original and allow consequential relief.

6. I have carefully examined the show cause notice, impugned order, appeal memorandum and written submission of the Appellant. The issue to be decided in the present appeal is whether the service provided by the appellant by way of Drilling / Boring of Tube Wells to individual farmers is taxable or otherwise. I find that the Appellant has filed appeal with condonation of delay requesting to set aside the impugned Order-In-Original, confirming the demand of Service Tax amounting to Rs. 80,89,579/- with Interest and various penalties under the Act.

7. As the Appellant has filed appeal with condonation of delay, I would first like to examine first whether the delay, if any, is condonable and whether the appeal can be admitted. I find that as per ST-4 filed by the appellant, date of communication of the decision or order appeal against is shown as 18.02.2022. Appeal is filed by the appellant on 04.05.2022. As per Order passed by Hon'ble Supreme Court in Miscellaneous Application



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No. 21 of 2022 along with other applications, it is clarified that the period from 15.03.2020 till 28.02.2022 shall stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings. Accordingly, last date to file appeal was 27.04.2022. Appellant filed the appeal on 04.05.2022 i.e. 06 (six) days delay. Looking to the ground advanced by the Appellant, I condone the delay of 06 days.

8. Now I proceed to examine contentions raised by the Appellant in the grounds of appeal is that the services provided by them for drilling of borewell to the individual farmers are non-taxable vide Section 66(D)(d)(i) of the Finance Act, 1994 i.e. Negative list of services and thereby not liable for the payment of Service Tax. The appellant has also relied upon the letter F.No. 354/35/2014-TRU dated 04.03.2014 stating that Borewell Services are excluded from tax liability since it is covered in the scope of Negative List Entry under Section 66 D (d) (i) of the Finance Act, 1994.

9. The Adjudicating Authority, in his findings in impugned Order-In-Original dated 15.02.2022, recorded that the drilling of the borewell/tubewell, even in the agriculture land, is a construction service. On this, I find that the Adjudicating Authority has not advanced any logical reasoning in support of his findings. The Adjudicating Authority has also failed to cite any legal provision under which the service provided by the Appellant is categorized as construction service. I am unable to visualize any structure emerging out as a result of the activity of drilling of borewell. Therefore, I am of considered view that such cryptic finding without any reasoning or backing of law is mischievous and not tenable. I discard the same in toto.

10. Now the issue to be decided is whether the service of drilling borewells for agriculturist is exempted from service under Section 66D(d)(i) of the Finance Act, 1994 or otherwise. Section 66D(d) of the Finance Act, 1994 reads as under:

***"(d) services relating to agriculture or agricultural produce by way of—***

*Am*



- (i) agricultural operations directly related to production of any agricultural produce **including** cultivation, harvesting, threshing, plant protection or testing;
- (ii) supply of farm labour;
- (iii) processes carried out at an agricultural farm **including** tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
- (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
- (v) loading, unloading, packing, storage or warehousing of agricultural produce;
- (vi) agricultural extension services;
- (vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce"

10.1 Plain reading of the above provision would reveal that it covers services relating to agriculture or agricultural produce by way of agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing. The scope of the provision is "including" and not limited to the activities specifically mentioned therein and covers all activities essential for the purpose of agriculture operations for exemption from payment of service tax. Drilling of borewell and thereby taking the water from borewell is very much essential for the agricultural activity and therefore, restricting the scope by reading the words in the statute in a narrow sense is not acceptable for denying legitimate benefit. Irrigation is essential for cultivation of any crop and, therefore, drilling of well is to be considered as an agricultural operation. Drilling of borewells in the agricultural fields, in my view has no other purpose and is an agricultural operation directly related to production of agricultural produce. I find that even prior to introduction of the Negative List regime of Service Tax in 2012, the Government had specifically kept out the service of drilling of borewells out of service tax net vide notification No.15/2005-ST dated 07.06.2005. In fact the Central and state governments have been extending subsidy/ financial assistance to the activity of drilling bore-wells in agricultural fields. Clearly, the intent was not to tax this activity.

10.2 The reliance taken by the adjudicating authority in the Advance Ruling No. AAAR/14/2021 (AR) dated 30.06.2021 issued by Tamil Nadu



*Thing*

State Appellate Authority is on the wrong footing as the same was rendered in the GST era and cannot be made applicable to Service Tax matters. It is well settled that an advance ruling has no precedence value at par with case laws. The GST Flyer on "Advance Ruling Mechanism in GST" issued by the Board clarifies that an advance ruling is not applicable to similarly placed other taxable persons in the state and is only limited to the person who has applied for an advance ruling. Thus, AAAR decision in respect of another taxpayer in a different state under a different statute in a different era relied upon by the adjudicating authority cannot be applied to the Appellant.

10.3 I also find that in the said Advance Ruling as reported at 2021 (54) G.S.T.L. 408 (App. A.A.R. - GST - T.N.) in TVL. Vallalar Borewells, the said party has contend before the Appellate Authority for Advance Ruling as under:

"The Hon'ble Finance Minister vide TRU Letter No. F. No. 354/35/2014-TRU, dated 4-3-2014 has clarified that drilling of borewell for supply of water for production of any agricultural produce is excluded from service tax since it is covered by the scope of negative list entry in Section 66D(d)(i) of the Finance Act."

It was in this context the Appellate Authority for Advance Ruling observed as under:

"7.5 The letter of the then FM quoted and relied by the appellant was also discussed by the Fitment Committee and finds mention during the 28th GST Council Meeting vide Annexure IV to agenda Item 7. After deliberations, the Council approved the proposal of Fitment Committee of not acceding to the demand of exemption for drilling of borewells for agriculture from GST but required to study further. In the same table in Annexure IV pertaining to issues relating to services, against Sl. No. 3 (page No. 258 of Vol. I), the Fitment Committee while stating that the same issue was already raised in the service tax regime quoting the FM letter, further reasoned as "The services covered by the scope of Section 66D(d)(i) of the Finance Act, 1994 and Sl. No. 25(a) of the mega exemption Notification No. 25/2012-S.T. are exempted in GST vide Sl. No. 54 and 3 of Notification No. 12/2017-C.T. (Rate). Thus, the status quo has been maintained in GST vis-a-vis Service Tax regime". It is clear from the above that as such no exemption was intended by the Government for borewell drilling for agricultural purposes and continues to be under its examination."

10.4 Contrary to the findings by the Adjudicating Authority, it is evident from the above that the Finance Ministry vide letter F. No. 354/35/2014-TRU dated 4-3-2014 had already clarified that drilling of borewell for supply of water for production of any agricultural produce was excluded from service tax and was covered by the scope of negative list entry in





Section 66D(d)(i) of the Finance Act, 1994. It is also clear from the above that during the 28<sup>th</sup> GST Council Meeting deliberations, referring to the table in Annexure IV pertaining to issues relating to services, against Sl. No. 3 (page No. 258 of Vol. I), it was observed that the Fitment Committee quoting the FM letter, had reasoned that "The services covered by the scope of Section 66D(d)(i) of the Finance Act, 1994 and Sl. No. 25(a) of the mega exemption Notification No. 25/2012-S.T. are exempted in GST vide Sl. No. 54 and 3 of Notification No. 12/2017-C.T. (Rate). Thus, the status quo has been maintained in GST vis-a-vis Service Tax regime". Thus, it is clear that the exemption that was extended by the Government for borewell drilling for agricultural purposes during Service Tax era continued to be under consideration under the GST regime too. I find that above Advance Ruling in fact supports the cause of the Appellant and does not support findings of the adjudicating authority as it observed that the service of borewell drilling activity was under the negative list during the Service Tax regime. Even, if it was decided otherwise by AAAR, such a ruling in the matter of GST cannot be made applicable to matter related to taxation of Service Tax under different statute, ignoring the specific statutory provisions and clarifications issued under the Service Tax law. As such, I hold that demand of service tax on the service of drilling of borewell to agriculturalist is not sustainable.

10.5. In the case of M/s. Pashupati Nath Tubewells Vs. Commissioner of Central Excise, Udaipur decided by CESTAT, Principal Bench, New Delhi in Service Tax Appeal No. 50424 of 2021 (SM), vide Final Order No. 50278/2022 dated 07.03.2022, wherein original authority had extended the benefit but the Commissioner (Appeals) denied it on appeal by the department observing that these affidavits (of farmers) were not supported by payment receipts from farmers and certificates from Gram Panchayat, it was held by the Hon'ble Tribunal that the activity of drilling borewells is covered in the negative list and is exempt from service tax. Hon'ble Tribunal in its conclusion observed as below:

"11. In view of my findings and evidences on record and relying on the ruling of the Hon'ble Supreme Court in the case of Raja Binoy Kumar Sahas Roy (supra), I hold that the agriculture/cultivation includes irrigation or watering of the plants, as due to lack of irrigation, it is very difficult to have any agriculture produce. Accordingly, I hold that the activities carried out by the appellant is covered in the




Negative List, which are exempt from tax. Accordingly, the impugned order-in-appeal is set aside and the order-in-original is restored. The appellant is entitled to consequential benefits in accordance with law. The appeal is allowed."

10.6 The Adjudicating Authority in the present case has not stated any reasons for deviating from this case law under the Service Tax law relied upon by the Appellant, in preference to his erroneous understanding of the ruling by AAAR of a different state, in case of a different appellant, under a different statute pertaining to different GST era. Therefore, I hold that drilling of Borewell in the agricultural fields is essentially an agricultural activity and legitimate benefit cannot be denied to the applicant.

11. In view of the above discussions and findings, I set aside the impugned order, dropping the entire demand, interest and all the penalties therein and allow the appeal filed by the Appellant.

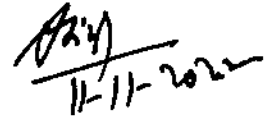
12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

सत्यापित / Attested



Superintendent  
Central GST (Appeals)  
Rajkot



(शिव प्रताप सिंह)  
(Shiv Pratap Singh)  
आयुक्त (अपील)  
Commissioner (Appeals)

By R.P.A.D.

To, M/s. Jagdish Borwell Co., Station Road, Bagasara, Dist.: Amreli, Gujarat-365440	सेवा में, मे० जगदीश बोरेवेल कंपनी, स्टेशन रोड, बगसरा, जिल्ला - अमरेली, गुजरात - 365440 ।
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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, भावनगर-III मण्डल को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फाइल।

