

::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

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सत्यमेव जयते

रजिस्टर्ड डाक ए.डी. द्वारा

DIN-20221264SX00000011E2

क्र	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/74/BVR/2022	728/SERVICE TAX/DEMAND/2021-22	27-12-2022

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

**BHV-EXCUS-000-APP-122-2022**

आदेश का दिनांक / Date of Order:	जारी करने की तारीख / Date of issue:
23.12.2022	27.12.2022

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. Swastik Electricals, Swastik Electricals Shed No. 26/B, Swarni Narayan Nagar, Botad, Bhavnagar Road Bhavnagar-364710

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 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to: -

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, 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 (सिस्टम) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा 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) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक 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 जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये का निर्धारित शुल्क जमा करना होगा। /

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/-, Rs.5000/-, Rs.10,000/- where amount of duty/demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक 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 जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and shall be accompanied by a fees of Rs. 1,000/- where the amount of service tax & interest demanded & penalty levied is more than Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेंगी 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 अपीलवाली 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 अपीलवाली 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 अपीलवाली प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत रकम  
(ii) सेनवेट जमा की ली गई गलत राशि  
(iii) सेनवेट 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 अपीलवाली प्राधिकारी के समक्ष विचाराधीन स्थान 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 की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सूचित, 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 को 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 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 an 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 ज्यूटी 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 समयावधि 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 संश्लेषण 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 IO 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, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के प्रति हुए भी को लिखा पत्रों कार्य से बचने के लिए यथास्थिति अपीलवाली 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 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-1 in terms of the Court Fee Act, 1975, as amended.

- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलवाली न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों को 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.

एक अपीलवाली 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। /

The applicant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in) for the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the applicant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in).



**:: अपील आदेश :: / :: ORDER-IN-APPEAL ::**

M/s. Swastik Electricals, Botad, Gujarat (hereinafter referred to as "Appellant") has filed present Appeal against Order-in-Original No. 728/ SERVICE TAX/ DEMAND/ 2021-22 dated 22.03.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST Division - I, Bhavnagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Income Tax Department has provided data containing details of Appellant, who declared in their Income Tax Returns for financial year 2014-15 showing income of Rs. 23,21,372.76 as gross receipts from services. The Income Tax Department has also provided data of Form 26AS showing details of total amount paid/ credited under Section 194C of the Income Tax Act, 1961, which depicted that appellant had earned income from providing services like contract & sub contract. The jurisdictional Superintendent, issued letter dated 14.08.2020 to the Appellant calling for the information/ documents for financial years 2014-15, 2015-16, 2016-17 & 2017-18 (upto June 2017). No reply/ response was received from the Appellant. The Service Tax was determined on the basis of data & details provided by the Income Tax department and culminated into Show Cause Notice dated 25.08.2020, invoking extended period of 5 years, proposing to demand Service Tax of Rs. 2,86,922/-, 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. 2,86,922/- under Section 73(1) 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), Section 77(2) and Section 77(1)(c) of the Act. The penalty of Rs. 2,86,922/- was also imposed upon the Appellant under Section 78 of the Act.

4. The Appellant has preferred the present appeal on 25.05.2022 on various grounds as stated below:

- (i) Order was passed without considering submissions made by the appellant.
- (ii) Nature of services considered in the show cause notice and in final order is without any basis.
- (iii) Nature of services considered in the show cause notice and in final order is without any trailing evidence on record.
- (iv) Activities carried upon by the appellant falls within the mega exemption notification no. 25/2012 dated 20.06.2012 and thus are exempted from Service Tax.
- (v) Duty liability determined by the adjudicating authority at Rs. 2,86,922/- is wrong and deserved to be deleted.
- (vi) Charging of Interest under Section 75 of Finance Act, 1994 and imposition of penalty under Section 77 & 78 of Finance Act, 1994 is not correct and imposition of entire penalty deserves to be deleted.

Personal hearing in the matter was held on 09.11.2022 which was attended by



*[Handwritten signature]*

Shri Kunj Shah, CA, Shri Pankaj Soni, CA & Shri Sandeep Belani, Accountant for Appellant, wherein they reiterated the submissions made in the appeal. He submitted that the service provided by them is under negative list vide entry K of Section 66D of Finance Act, 1994. Further, they are providing service to the main contractor as sub-contractor. The service by main contractor to Government entity is exempt. Therefore, they are also exempt vide entry at Sr.No. 29(h) of Mega Exemption Notification N. 25/2012-ST Also, their turnover is below the threshold limit. They undertook to submit a detailed argument note with supporting documents in this regard within a week. Therefore, in view of above they requested to set aside the order of the lower authority.

6. Further appellant has submitted following arguments in favour of their contention (other than that mentioned in above para 4 & 5):

- i) Service is provided to PGVCL (Paschim Gujarat Vij Company Ltd) and PGVCL is covered under the definition of Government authority.
- ii) Relied upon CESTAT Delhi in the case of M/s Vivek Constructions Vs Commissioner of Central Excise and Central Goods & Service Tax (Service Tax Appeal No. 50791, 50750-50751 & 50792 of 2019(SM) decided on October 5 of 2021) wherein it was held that no service Tax is payable on services provided to a Government Company for providing work contract service inter alia to Rajasthan Raja Vidhyut Prasharan Nigam Ltd., a State PSU.
- iii) Adjudicating authority has confirmed demand and imposed penalty without specifying the rate at which Service Tax is being calculated.
- iv) Adjudicating authority has confirmed demand and imposed penalty without considering cum-duty value of service and relied upon following cases
  - a) CCE & C Vs. Advantage Media Consultant (2008) 14 ST 483 Kol. CESTAT
  - b) CST Bangalore Vs Prompt and Smart Security [2009] 21 ST (Bangalore-CESTAT)/[2008] (STR 237 Bangalore-CESTAT)
  - c) In [2013] 34 taxmann.com 81 (Ahmedabad-CESTAT) / [2013] 42 GST 379 (Ahmedabad-CESAT)
- v) While confirming demand and imposing penalty, 3<sup>rd</sup> proviso to Rule 6 of Service Tax Rules 1994 is not considered.
- vi) While confirming demand and imposing penalty, valuation rules drafted specifically for works contract services is not considered.

7. 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 as sub- contractor to main contractor is taxable or otherwise. I find that the Appellant has filed appeal with request to set aside the impugned Order-In-Original, confirming the demand of Service Tax amounting to Rs. 2,86,922/- with Interest and various penalties under the Act.

8. Now I proceed to examine point wise contentions raised by the Appellant in the grounds of appeal:

- i) The appellant has alleged that submission furnished by them was not considered while passing the order, I find that the jurisdictional Superintendent had issued letter dated 14.08.2020 to the Appellant calling for the information/ documents for financial years 2014-15, 2015-16, 2016-17 & 2017-18 (upto



June 2017) but no reply/ response was received from the Appellant. I also find that Show Cause Notice was sent by registered post at the given address but no reply was received. Letter of personal hearing was also issued to the noticee but it was not delivered. Therefore, adjudicating authority was left with no option but to decide the case ex-parte on the basis of available case records.

- ii) Against the contention of the appellant about Nature of services considered in the show cause notice and in final order, I find that in absence of any information/ documents submitted by the appellant, the adjudicating authority, on the basis of data shared by Income Tax department, considered amount of Rs. 23,21,372.76 as taxable value and confirmed the demand.
- iii) The contention of the appellant is that activities carried upon by the appellant fall within the mega exemption notification no. 25/2012 dated 20.06.2012 and thus are exempted from Service Tax. I find that in absence of submission of information/documents in support of their claim, it was not possible to consider whether the services provided by the appellant is covered under negative list and to allow exemption thereon.
- iv) The appellant has contended that duty liability determined by the adjudicating authority at Rs. 2,86,922/- is not correct, I find that adjudicating authority has confirmed the duty liability based on data (form of 26AS) received from Income Tax department and taxable income was derived at and duty liability was thus determined. Accordingly, adjudicating authority confirmed to recover Service Tax amounting to Rs. 2,86,922/- by invoking extended period of five year as per the proviso to sub-section (1) of Section 73 of the Act.
- v) The appellant has contended that charging of Interest under Section 75 of Finance Act, 1994 and imposition of penalty under Section 77 & 78 of Finance Act, 1994 is not correct and imposition of entire penalty deserves to be deleted, I find that charging of interest under Section 75 is mandatory along with recovery of Service Tax amount confirmed under proviso to sub-section (1) of Section 73 of the Act.
- vi) The appellant has contended that they are not liable to pay Service Tax as the services provided by them is under negative list vide entry K of Section 66(D) of the Act. Entry K of Section 66(D) of the Act is reproduced below:

*"SECTION 66D. Negative list of services.— The negative list shall comprise of the following services, namely :—*

(a)...

(b)...

.....

(k) *transmission or distribution of electricity by an electricity transmission or distribution utility;*"

Accordingly, the negative list comprises of the **service of transmission or distribution of electricity by an electricity transmission or distribution utility**. Appellant has provided services of installation of transformers and entry K of Section 66D is about transmission or distribution of electricity.



Thus, appellant's contention that services provided by them is under negative list, vide entry K of Section 66(D), is not tenable.

- vii) The contention of the appellant is that service provided by main contractor to government entity is exempt therefore they are also exempted vide entry at Sr. No. No. 29(h) of mega exemption Notification No. 25/2012-ST. Entry no. 29(h) of mega exemption notification no. 25/2012 is reproduced as below:

*"29. Services by the following persons in respective capacities –*

*(a)...*

*(b)...*

*.....*

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

Form 26AS of the appellant shows that whole amount of demand confirmed in impugned order is received only from PGVCL. That means appellant has not provided services as sub-contractor and payment received by the appellant is derived from their 26AS. Thus, appellant's claim that service provided by them is exempted vide entry at Sr. No. No. 29(h) of mega exemption Notification No. 25/2012-ST as the sub-contractor providing services by way of works contract to another contractor providing works contract services to government entity is not tenable.

- viii) The appellant has contended that service was provided to PGVCL (Paschim Gujarat Vij Company Ltd) which is 100% subsidiary of Gujarat Urja Vikas Nigam Limited with 100% stake of the state Government and hence PGVCL is covered under the definition of Government authority. Definition of Government Authority as per para 2(s) of Notification No. 25/2012 dated 20.06.2012 is reproduced below:

*"(s) "governmental authority" means an authority or a board or any other body;*

*(i) set up by an Act of Parliament or a State Legislature; or*

*(ii) established by Government,*

*with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;"*

From the Notes to the financial statements of M/s. Pashchim Gujarat Vij Company Limited (PGVCL), which have been obtained from web-site of PGVCL, it is observed that PGVCL is an Electricity Distribution Company, which was incorporated during the year 2003 by Gujarat Electricity Board (GEB). The company obtained the certificate of the commencement of business during year 2003 and was one of the several companies created as part of efforts towards restructuring of the power sector in the State of Gujarat. It was created with a mandate to run as Commercial Organisation. Further, 100% shares of PGVCL are held by M/s. Gujarat Urja Vikas Nigam Limited, a Body Corporate incorporated under the Companies Act, 2013. In view of the above, I find that PGVCL is a company engaged in the business of distribution of electricity in



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certain area and is a commercial concern. They charge certain prescribed amounts from their customers against the services provided by them and their activities are limited to its customers subject to payment of charges as fixed in business of distribution of electricity. Thus, I find that PGVCL would not be covered under the definition of "Governmental Authority" and in view of the same, the benefit of exemption from payment of Service Tax under the said Notification would not be available to the services provided to PGVCL by their service providers. Also, I find that the services provided by the PGVCL are not covered under Services/ Works as defined under Article 243W of the Constitution of India. Therefore, PGVCL cannot be considered as a "Governmental Authority" during relevant period in terms of definition under the Finance Act, 1994, and Notifications issued thereunder. In this regard, I rely upon following case laws:

- (i) Uttam Industries [2011 (265) ELT 14 (SC)]
- (ii) Dilip Kumar & Company [2018 (361) E.L.T. 577 (S.C.)]
- (iii) Cargill India Pvt. Ltd. [2013 (288) E.L.T. 209 (Guj.)]
- (iv) Mathura Polymers Pvt. Ltd. [2019 (365) E.L.T. 292 (Mad.)]
- (v) Punjab State Sports Council [2011 (269) ELT 540 (Tri. - Mum.)]

In view of above, I find that benefit of exemption from payment of Service Tax as claimed by the Appellant is not admissible to them for such services provided to PGVCL during the financial Years 2014-15.

- ix) The appellant has relied upon case of M/s Vivek Constructions Vs Commissioner of Central Excise and Central Goods & Service Tax (Service Tax Appeal No. 50791, 50750-50751 & 50792 of 2019(SM) decided on October 5 of 2021) by CESTAT Delhi, wherein it was held that no service Tax is payable on services provided to a Government Company for providing work contract service inter alia to Rajasthan Rajya Vidhyut Prasharan Nigam Ltd., a State PSU. In this regard, I find that in the case on hand appellant has given services to PGVCL (Paschim Gujarat Vij Co Ltd) which is registered as corporate company under the Company's Act. As per Mega Exemption Notification No. 25/2012, exemption is granted to services provided to Government authority and its definition is as below:

*"(s) "governmental authority" means an authority or a board or any other body;*

*(i) set up by an Act of Parliament or a State Legislature; or*

*(ii) established by Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;."*

Detail of Twelfth Schedule of Article 243 of Constitution is as below:

*"APPENDIX-3 Twelfth Schedule [Article 243W of the Constitution (Seventy-Fourth Amendment) Act, 1992]*

*Asit*



1. Urban planning including town planning.
2. Planning of land- use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
15. Cattle pounds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries."

From conjoint reading of aforementioned facts, I find that function of sale/ distribution of electricity is not a function entrusted to a municipality under Article 243 of Constitution and the claim of appellant is not tenable.

- x) Regarding appellant's contention that Adjudicating authority has confirmed demand and imposed penalty without specifying the rate at which Service Tax is being calculated, I find that Demand is confirmed at applicable rate of Service Tax i.e., 12.36% for relevant period - financial year 2014-15. Therefore, this contention is also not tenable.
- xi) Appellant has contended that Adjudicating authority has confirmed demand and imposed penalty without considering cum-duty value of service and relied upon some cases. I find that in absence of relevant supporting documents/ evidence, it cannot be confirmed that applicable tax is inclusive in bill amount. Thus, claim of appellant to consider value of service as cum-duty cannot be allowed.
- xii) Appellant has contended that while confirming demand and imposing penalty, valuation rules drafted specifically for works contract services has not been considered. I find that in absence of supporting documents/ evidence, it cannot be confirmed that appellant has entered into work contract with service recipient. Therefore, claim of appellant to consider service rendered as work contract and to consider valuation rules drafted therefor cannot be allowed.



*As-1*



- xiii) Appellant's contention that 3rd proviso to Rule 6 of Service Tax Rules 1994 is not considered while confirming demand and imposing penalty. Rule 6 of Service Tax Rules, 1994, is reproduced as below:

"Rule 6. Payment of service tax

- (1) The service tax shall be paid to the credit of the Central Government,-  
 (i) by the 6th day of the month, if the duty is deposited electronically through internet banking;  
 and  
 (ii) by the 5th day of the month, in any other case,  
 immediately following the calendar month in which the service is deemed to be provided as per the rules framed in this regard:"

[Provided also that in case of such individuals, partnership firms and one person companies whose (substituted vide Notification 19/2016-Service Tax) aggregate value of taxable services provided from one or more premises is fifty lakh rupees or less in the previous financial year, the service provider shall have the option to pay tax on taxable services provided or [agreed] to be provided by him up to a total of rupees fifty lakhs in the current financial year, by the dates specified in this sub-rule with respect to the month or quarter, as the case may be, in which payment is received.]

Regarding appellant's above-mentioned contention, I find that appellant's contention is without any relevance, as 3rd proviso to Rule 6(1) of Service Tax Rules, 1994, is in context of date of payment of Service Tax and not related with appellant's claim of exemption from Service Tax.

- xiv) Against contention of appellant that their turnover is below the threshold limit, I find that as per provision of Finance Act, 1994, the threshold limit was 10,00,000/- and the income as per Section 194C of the appellant, as seen in their 26AS form, is Rs. 23,21,372.76 which is above threshold limit.

I find that the income received by the appellant as provided in data of Form 26AS showing details of total amount paid/ credited under Section 194C of the Income Tax Act, 1961 during the previous financial year 2013-14 was Rs. 2,13,523/- which is below threshold limit. Further, the turnover for the financial year 2014-15 as per financial records/ documents submitted by the appellant viz. worksheet, invoices, Profit & Loss account and Income Tax Return is shown as Rs. 37,47,168/-. On verification of balance sheet/ profit & loss account and Income Tax Return for the period 2014-15, it is found that out of total income of Rs. 37,47,168/- the amount of Rs. 26,60,370/- is sales of goods on which the Appellant has paid VAT and thus, no service tax can be leviable on this sales income. The remaining amount of Rs. 10,86,298/- is relating to job-work income on which the Service Tax is payable by the Appellant. However, looking to the taxable income during the year 2013-14 which is below threshold limit of Rs. 10 Lakh, the Appellant is eligible for benefit of value-based exemption under Notification No. 6/2005-ST dated 01.03.2005, as amended vide Notification No. 33/2012-Service Tax dated 20.06.2012, during the year 2014-15 and accordingly, I allow the same.



*(Signature)*

8. I direct the Adjudicating Authority to re-calculate and convey the Service Tax liability of Appellant after allowing benefit of the Notification as mentioned in Para 7(xiv) within 30 days of receipt of this order.

9. I uphold the interest on Service Tax amount so re-calculated by the Adjudicating Authority, as discussed in para 8 supra. I also uphold the penalties under Section 76, Section 77(2), and Section 77(1)(a) of the Act on the Appellant. I also uphold the penalty equal to Service Tax amount, so re-determined by the Adjudicating Authority, 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 the recalculated tax demand by the adjudicating authority, the amount of penalty liable to be paid by such person under Section 78 shall be twenty-five percent of the tax so determined.

10. In view of above, I conclude that the appellant is liable to pay Service Tax on the re-determined amount along with applicable interest and penalties as discussed in above para 7(xiv), 8 & 9.

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

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

सत्यापित / Attested

*(S.S. Rana)*

Superintendent  
Central GST (Appeals)  
Rajkot

*(Shiv Pratap Singh)*

(शिव प्रताप सिंह)  
(Shiv Pratap Singh)

आयुक्त (अपील)  
Commissioner (Appeals)

By R.P.A.D.

To, M/s. Swastik Electricals, Swastik Electricals Shed No. 26/B, Swaminarayan Nagar, Bhavnagar Road, Botad, Gujarat-364710	सेवा में, मे. स्वस्तिक एलेक्ट्रिकल्स, स्वस्तिक एलेक्ट्रिकल्स शेड नंबर 26/बी स्वामीनारायण नगर, भावनगर रोड, बोटाद, गुजरात - 364710 ।
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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।

✓ गार्ड फाइल।

