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|---|---|
|  | <b>::आयुक्त (अपील) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क::</b><br><b>O/O THE COMMISSIONER (APPEALS), GST &amp; CENTRAL EXCISE</b>  |
|   | द्वितीय तल, जी एस टी भवन / 2 <sup>nd</sup> Floor, GST Bhavan<br>रेस कोर्स रिंग रोड / Race Course Ring Road<br>राजकोट / Rajkot - 360 001<br>Tele Fax No. 0281 - 2477952/2441142 Email: commrappl3-cexamd@nic.in<br>DIN20221264SX000071287A |

अपील / फाइल संख्या / Appeal / File No. **V2/71/BVR/2022** मूल आदेश सं / O.I.O. No. **152/AC/HG/BVR-2/21-22** दिनांक / Date **23-03-2022**

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

**BHV-EXCUS-000-APP-126-2022**

आदेश का दिनांक /

Date of Order:

26.12.2022

जारी करने की तारीख /

Date of issue: 28.12.2022

श्री शिव प्रताप सिंह, आयुक्त (अपील), राजकोट द्वारा पारित /

Passed by Shri Shiv Pratap Singh, Commissioner (Appeals), Rajkot.

अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवा कर वस्तु एवं सेवा कर, 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/GST / GST, Rajkot / Jamnagar / Gandhidham :

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

**M/s. Bhadrashinh Bhagwatsinh Gohil, Krishna Enterprise, OPP. Plot No. 124 Nr Rajendra Weighbridge, Ship Breaking Yard Sosiya Pin-364081, Bhavnagar**

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 सेवा कर 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 मामलों सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए। /

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

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहामाली 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, रूपए 5 लाख या उससे कम, 5 लाख रूपए या 50 लाख रूपए तक अथवा 50 लाख रूपए से अधिक है तो क्रमशः 1,000/- रूपए, 5,000/- रूपए अथवा 10,000/- रूपए 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/- रूपए 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 सेवा कर 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 सेवा कर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रूपए 5 लाख या उससे कम, 5 लाख रूपए या 50 लाख रूपए तक अथवा 50 लाख रूपए से अधिक है तो क्रमशः 1,000/- रूपए, 5,000/- रूपए अथवा 10,000/- रूपए 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/- रूपए का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994 to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than 50 lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than 50 lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs.500/-



- (ii) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकती एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियां 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 (सेस्टट) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्राना विवादित है, या जुर्राना, जब केवल जुर्राना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रूपए 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 अपीलीय प्राधिकारी के समक्ष विचारार्थीन 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 की 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 जाना चाहिए। /

A revision application lies to the Under Secretary to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /  
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
- (ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के सुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /  
In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
- (iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /  
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
- (iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्यूटी केडीटी इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और इस आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायातिथि पर या बाद में पारित किए गए हैं। /  
Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
- (v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील)नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश 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 साथ के, तौर पर TR-6 को 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 ढंग से किया जाना चाहिए। इस तथ्य के हित हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थित 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क 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 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 ::**

~~Shri Bhadreshsinh Bhagwatsinh Gehil, Krishana Enterprise, Bhavnagar~~  
(hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. 152/AC/HG/BVR-2/21-22 dated 23.03.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST, Division, Bhavnagar-2 (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Income Tax Department shared the third party information/ data based on Income Tax Returns/ 26AS for the Financial year 2014-15 of the Appellant. Letter dated 03.08.2020 & 20.08.2020 were issued by the Jurisdictional Range Superintendent requesting the Appellant to provide information/documents viz. copies of I.T. Returns, Form 26AS, Balance Sheet (including P&L Account), VAT/ Sales Tax Returns, Annual Bank Statement, Contracts/ Agreements entered with the persons to whom services provided etc. for the Financial year 2014-15 to 2017-18 (upto June-2017). The said letters were also sent on email of the Appellant. However, no reply was received from the Appellant.

3. In absence of data/information, a show cause notice bearing No. V.73/03-23/D/CGST BVR-2/2020-21 dated 11.09.2020 was issued to the Appellant, demanding Service Tax and cess to the tune of Rs. 29,334/- under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act') alongwith interest under Section 75 of the Act. It was also proposed to impose penalties under Section 77(1)(a), 78, 77(2) and 77(1)(c) of the Act upon the Appellant.

4. The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order who confirmed Service Tax demand of Rs. 29,334/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs. 29,334/- under Section 78 of the Act, imposed penalty of Rs. 5,000/- each under Section 77(1)(a), 77(2) and 77(1)(c) of the Act.

5. Being aggrieved, the Appellant has preferred the present appeal on various grounds interalia stating that

(a) they are the approved Government contractor to carry out the contracted works exclusively engaged in providing civil work construction work on behalf of the department of the state government. Such civil work like dam, building, road, paver block road etc. directly pertaining to concerned government department of the government of Gujarat. Whatever service/ facilities created/ installed by the Government is always being done/ carried out only in the interest of welfare of the people residing within the jurisdiction of state of Gujarat.

(b) The assessable value taken for the purpose of ascertaining/ calculating the



Service Tax under reference appears to have been taken only on the basis of such income as accounted for in the respective accounts for the purpose of discharging such tax under the provision of Income Tax Law. The Department has failed to establish the genuineness of the taxable value considered for confirming the Service Tax of Rs. 29,334/-. The assessable value considered for the purpose of determining the so called Service Tax appears not to have been true, correct and legal. There must be presence of provider of taxable service and the recipient of the service. In the present case, the recipient of the so called service is the state government which is not a person. The government has been constituted under the constitution of India and accordingly, the commercial purpose shall not come into picture to ascertain the question of liability of paying so called Service Tax since the government is discharging the duty only on the welfare of the people having no any commercial intention.

(c) The Adjudicating Authority has erred in not considering the provisions of Notification No. 25/2012-Service Tax dated 20.06.2012, Sr. No. 12 pertaining to services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair maintenance, renovation, or alteration of and hence no Service Tax is levied on taxable services provided to the Government.

6. The matter was posted for hearing on 07.12.2022. Shri N. K. Maru & Shri U. H. Qureshi, both consultant and Shri Ashokbhai Vadhera, Manager appeared for personal hearing. They reiterated the submissions made in the appeal and submitted that they have provided construction service to the Government Department as contractors. Their service is exempted under the Mega Exemption Notification. They submitted further written submissions dated 03.12.2022 and reiterated contents thereof. Based on this, they requested to set aside Order-In-Original.

6.1 In written submission, the Appellant stated that the Income Tax law and Service Tax law are totally different to each other. They are government approved contractor engaged in services like construction of government building, roads etc. The rest of the submission is akin to grounds of appeal submitted by the Appellant. They rely on 2011 (263) ELT 318 (Tribunal Chennai) ITS Solutions India Pvt. Ltd. Vs. Commissioner of Customs, Chennai, 2018 (8) GSTL 13 (Guj.) Commissioner of CGST & C.Ex., Surat Vs. BMS Projects Pvt. Ltd., 2021 (45) GSTL 290 (Tri.-Hyd.) United Rail Road Consultants Pvt. Ltd. Vs. Commissioner of C.T., Secunderabad, 2011 (54) GSTL 159 (Tri.-Hyd.) Dwaraka Constructions Vs. Commissioner of Cus. C.Ex. & S.T. Tirupathi.

7. I have carefully gone through the case records, impugned order and appeal memorandum filed by the Appellant. I find that the issue to be decided



*[Handwritten signature]*

in the case on hand is whether the activity carried out by the appellant is liable to Service Tax or otherwise.

8. I find that Show Cause Notice had been issued without verifying any data or nature of services provided by the Appellant as the same had been issued only on the basis of data received from the Income Tax department and the Adjudicating Authority has ex-parte confirmed the demand of Service Tax vide impugned order. It has been held by the Adjudicating Authority that the services provided by the Appellant is a taxable service in absence of information/documents which were neither submitted by the Appellant nor they had filed any defense submission and not appeared for personal hearing also. The Appellant on the other hand in the grounds of appeal as well as during the course of personal hearing, stated that they are registered Government contractor engaged in business activity towards construction services provided to the Government which is exempted by way of Mega Exemption Notification No. 25/2012-Service Tax dated 20.06.2012.

9. On verification of Annual Report for the Year 2014-15, it is found that the Appellant has earned construction work income of Rs. 2,31,00,035/- on which the Service Tax has been demanded in the Show Cause Notice. On verification of copies of work order and invoices, it is found that they have provided construction services directly to Gujarat Maritime Board, Alang Port Office and APMC, Talaja. For Alang Port Office, they have provided services of construction of road divider alongwith pipe and cable at Ship Breaking Yard, Alang. For Gujarat Maritime Board, they have provided the services of security office building at entrance at New Port, Bhavnagar. For Agriculture Produce Marketing Committee, Talaja, they have provided the services of construction of water-room Tank and R. O. plant room. It is contention of the Appellant that their services are exempt under Notification No. 25/2012-Service Tax dated 20.06.2012. I find force in argument advanced by the Appellant since, the services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession is exempted by way of Sr. No. 12A of the Notification No. 25/2012-Service Tax dated 20.06.2012.

10. During the period under question the Appellant has provided services to the main contractor M/s. Preya Construction Co., M/s. Sanjay Construction Company, M/s. Capital Construction Co. and M/s. Shree Bala Construction Co. The services provided by the Appellant to M/s. Preya Construction Co. was relating to renovation of road divide of approach and service road at Ship



*[Handwritten signature]*

Breaking Yard, Alang which was awarded by Gujarat Maritime Board to the main contractor M/s. Preya Construction Co. The services provided by the Appellant to M/s. Sanjay Construction Company was relating to resurfacing the existing C. C. Road by providing C. C. paver block at Port Navlakhi which was awarded by Gujarat Maritime Board to the main contractor M/s. Sanjay Construction Company. Further, the services provided by the Appellant to M/s. Capital Construction Co. was relating to Administrative building by carrying out up-gradation at ship breaking yard, Alang which was awarded by Gujarat Maritime Board to the main contractor M/s. Capital Construction Co. Likewise, the services provided by the Appellant to M/s. Shree Bala Construction Co. was relating to filling up of sand at construction site of Administrative building at ship breaking yard, Alang which was awarded by Gujarat Maritime Board to the main contractor M/s. Shree Bala Construction Co. I find that all these works carried out by the Appellant are nothing but services in the capacity of sub-contractor of works contract to another contractor providing works contract services which are exempt, vide Sr. No. 29(h) of the Notification No. 25/2012-Service Tax dated 20.06.2012.

11. Since the demand is based on data received from Income Tax department and demand of Service Tax was made on value of Rs. 2,37,327/- out of the total income of Rs. 2,31,00,035/- for the year 2014-15, as discussed in para supra, the services provided by the Appellant are exempted by virtue of Sr. No. 12A and Sr. No. 29(h) of the Notification. In view of discussions and finding, I set aside the impugned order 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



(शिव प्रताप सिंह)/(Shiv Pratap Singh),

आयुक्त (अपील)/Commissioner (Appeals)

Superintendent

Central GST (Appeals)

By R.P.A.D.

Rajkot

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| To,<br>Shri Bhadreshsinh Bhagwatsinh<br>Gohil, Krishana Enterprise, Opp.:<br>Plot No. 124, Nr.: Rajendra Weight<br>Bridge, Ship Breaking yard, Sosiya-<br>364081, Bhavnagar. | सेवा में,<br>मे. भद्रेशसिंह भगवतसिंह गोहील, कृष्णा<br>एंटरप्राइस, प्लॉट संख्या 124 के सामने,<br>राजेन्द्र वेटब्रिज के बाजुमे, शिप ब्रेकिंग यार्ड,<br>सोसिया, भावनगर-364081। |
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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 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 मण्डल-2 को आवश्यक कार्यवाही हेतु।

5) गार्ड फाइल।



