



:: आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा करऔरकेन्द्रीय उत्पाद शुल्क::
O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhayan
रेस कोर्स रिंग रोड / Race Course Ring Road
राजकोट / Rajkot - 360 001

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सत्यमेव जयते

DIN20230164SX0000917577

क अपील / फाइलसंख्या /
Appeal / File No.
GAPPL/COM/STP/1929/2022

मूल आदेश सं /
O.I.O. No.
BHV-EXCUS-000-ADC-VM-004-
2022-23

दिनांक/Date
26-May-2022

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

BHV-EXCUS-000-APP-139-2022

आदेश का दिनांक /

Date of Order:

28.12.2022

जारी करने की तारीख /

Date of issue:03.01.2023

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. Pravinsinh Kanubhai Jadav, Flat No. 401, Shivshakti Apartment, BH. Mahatma Gandhi Hospital, Wadhwan City, Dist.- Surendranagar, Gujarat-363020

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील वापर 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 मामलों सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बतौर गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६ को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

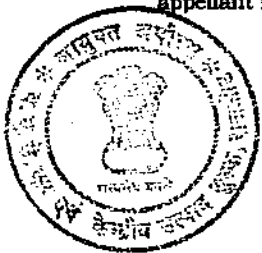
(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहाँ उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपये 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 जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वगन 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/-

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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, जहाँ सेवाकर की माँग, ब्याज की माँग 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 जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये का निर्धारित शुल्क जमा करना होगा।/
The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees 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/-.



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत वर्ष की गयी अपील, सेवाकर नियमवानी, 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 प्रतियाँ संलग्न करें। (उनमें से एक प्रति प्रामाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेट्टल) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1994 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर की 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 इस क्रॉड हमए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनबेट जमा की भी गई गसत राशि
(iii) सेनबेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान विधियों (सें 2) अधिनियम 2014 के अंश से पूर्व किसी अपीलीय 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 प्रथमपठक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संवर 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 मांग के किसी नुकसान के मामले में, जहां नुकसान किसी मात्र 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 मात्र के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में मात्र 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 मात्र के विनिर्माण में प्रयुक्त कच्चे मात्र 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 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 मात्र 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 अट्टी केवर्ट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत लागू की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं 2), 1998 की धारा 109 के द्वारा नियत की गई तरीक 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 आवेदन व अपील आवेदन की दो प्रतियाँ संलग्न की जानी चाहिए साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साध्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the 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 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 चाहिए। इस तथ्य के होते हुए भी की लिखा गयी 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 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-I के अनुसार मूल आदेश एवं स्थान आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। / One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-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 उल्लिखित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.
(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित न्यायक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलाधीन विभागीय वेबसाइट www.cbcc.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.cbcc.gov.in.



:: अपील आदेश / ORDER-IN-APPEAL ::

(hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. BHV-EXCUSE-000-ADC-VM-004-2022-23 dated 26.05.2022 (hereinafter referred to as 'impugned order') passed by the Additional Commissioner, Central GST HQ, Bhavnagar (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 of the Appellant for the year 2015-16 & 2016-17. The data received from the Income Tax department contained details of the Appellant who had not obtained Service Tax registration.

3. In absence of data/information, a Show Cause Notice dated 21.04.2021 was issued to the Appellant demanding Service Tax including cess to the tune of Rs. 75,75,107/- under Section 73(1) of the Act by invoking extended period of 5 years 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.

4. The adjudicating authority vide the impugned order confirmed Service Tax demand of Rs. 1,78,245/- under Section 73(1) along with interest under Section 75 of the Act and imposing penalty of Rs. 1,78,245/- under Section 78 and penalty of Rs. 10,000/- each under Section 77(1)(a) and 77(2) of the Act. The Adjudicating Authority dropped the demand of Rs. 73,96,862/- since the same was for exempted services.

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

(i) They were providing services of construction, repair, maintenance, renovation, or alteration of public road and was claiming exemption by virtue of Entry No. 13 of Notification No. 25/2012-Service Tax dated 20.06.2012 and hence they were not required to register as per provisions of the Act. The Adjudicating Authority dropped the demand of Rs. 73,96,862/- and confirmed the demand of Rs. 1,78,245/- on three contracts.

(ii) They rely on Notification No. 33/2012-Service Tax dated 20.06.2012 as per which "taxable services" of aggregate value not exceeding ten lakh rupees in any financial year exempts from whole of the Service Tax leviable thereon under Section 66B of the Act. For claiming exemption in the current year, the value of taxable services in the preceding financial year should not exceeds ten lakh rupees. During the preceding year 2014-15, they have provided services



[Handwritten signature]

exclusively for construction of road which is exempted and thus they are eligible for availing threshold exemption of ten lakh rupees in F.Y. 2015-16 as per Notification No. 33/2012-Service Tax dated 20.06.2012. In support they have submitted copy of Form 26AS, work order and invoices for the year 2014-15.

(iii) For the year 2015-16, they were under bonafide belief that whole services provided were exempt but the Adjudicating Authority in the impugned order held that two services valued at Rs. 8,11,005/- were taxable due to amendment in Entry No. 12 of the Notification No. 25/2012-Service Tax. The Appellant submitted that even if it is assumed that they had provided taxable services of Rs. 8,11,005/- as per impugned order, they are not liable to pay Service Tax as they are eligible for threshold exemption of Rs. 10 Lakh during 2015-16 and hence the demand is liable to be quashed.

(iv) Similarly for the year 2016-17, they are eligible for threshold exemption because in the preceding financial year 2015-16 value of taxable services were not exceeded Rs. 10 Lakhs and thus, they are not liable to pay Service Tax on taxable value of Rs. 4,04,337/- for the year 2016-17.

(v) Show Cause Notice and impugned order issued without investigation and merely based on Income Tax Return is not valid and they rely on Rameshchandra Shah Vs. UOI and Others - TS-77-HC-2021-Bom-ST wherein Hon'ble. Bombay High Court set aside and quashed the Show Cause Notice issued merely based on the information received from the Income Tax Department. They further rely on the case of Sharma Fabricators & Erectors Pvt. Ltd.- 2017 (5) GSTL 96 (Tri.-All.), Kush Constructions Vs. CGST Nacin-2019 (24) GSTL 606 (Tri.-All.), Alpa Management Consultants P. Ltd. Vs CST- 2007 (6) STR 181 (Tri.-Bang.), Tempest Advertising (P) Ltd. V. CCE- 2007 (5) STR 312 (Tri.-Bang.), Alpa Management Consultants Pvt. Ltd. V. CST- 2007 (6) STR 181 (Tri.-Bang.), Free Look Outdoor Advertising V. CCE - 2007 (6) STR 153 (Tri.-Bang.), Kirloskar Oil Engines Ltd. V. CCE- 2004 (178) ELT 998 (Tribunal) and Hindalco Industries V. CCE-2003 (161) ELT 346 (T).

(vi) The extended period of limitation not invocable in absence of evidence that shows that they had conducted fraud or collusion or suppression with intent to avoid tax and thus demand is time barred and question of levy of penalty, late fee and interest does not arise.

6. Personal hearing in the matter was held on 28.12.2022. CA Punit Prajapati appeared for personal hearing and reiterated the submissions in the appeal. The Appellant is providing road construction service which is exempt from the Service Tax. Major portion of the demand is already dropped by the Adjudicating Authority. The remaining demand was confirmed due to lack of supporting



Am

documents which they have now attached with the appeal. Further, the value of remaining services is below threshold exemption limit. Therefore, he requested to set aside the Order-In-Original.

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 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 confirmed the demand of Service Tax vide impugned order after analyzing the documentary evidences submitted by the Appellant. The Adjudicating Authority dropped the demand of Rs. 73,96,862/- out of total demand of Rs. 75,75,107/- by holding that the same is related to exempted work under Notification No. 25/2012-Service Tax dated 20.06.2012. The Adjudicating Authority confirmed the demand of Rs. 1,78,245/- on three work contracts awarded by governmental authority since the exemption was upto 31.03.2015 as per Entry No. 12(a) of the Notification No. 25/2012-Service Tax dated 20.06.2012 but the said exemption was withdrawn w.e.f. 01.04.2015 vide Notification No. 6/2015-Service Tax dated 01.03.2015 which was restored w.e.f. 01.03.2016 under new Entry 12A(a) and vide Section 102 of the Act for the period from 01.04.2015 to 29.02.2016 with conditions (i) services should be provided under a contract (ii) such contract should have been entered prior to 01.03.2015 on which appropriate stamp duty, wherever applicable had been paid prior to 01.03.2015 and (iii) the exemption comes with a sunset clause that this exemption shall not apply on or after 01.04.2020.

9. It is the contention of the Appellant, they are eligible for benefit of threshold exemption of Rs. 10 Lakh as per Notification No. 33/2012-Service Tax dated 20.06.2012. On this, I find that as per Notification No. 33/2012, the value of exempted service is to be excluded while deciding the threshold limit of Rs. 10 Lakh. The relevant portion is re-produced below for reference:

33/2012-ST, Dated: June 20, 2012

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Finance Act), and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification No. 6/2005-Service Tax, dated the 1st March, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide G.S.R. number 140(E), dated the 1st March, 2005, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act:

Provided that nothing contained in this notification shall apply to,-



[Signature]

(I)

(II)

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Explanation.- For the purposes of this notification,-

(A)....

(B) "aggregate value" means the sum total of value of taxable services charged in the first consecutive invoices issued during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66B of the said Finance Act under any other notification."

9.1 In the case of hand the total value of service (other than exempted service value) for the year 2015-16 is Rs. 8,11,005/- and for the year 2016-17 is Rs. 4,04,337/- which is below threshold limit of Rs. 10 Lakh. Therefore, I am of considered view that in the case on hand the above mentioned receipts of service portion is to be considered as value of taxable services. As per Notification No. 33/2012-Service Tax, the value of taxable services is below threshold limit of Rs. 10 lakh and hence the Appellant is eligible for the benefit of Notification No. 33/2012-Service Tax.

10. I find that the provisions of the Small Scale Exemption Notification, aggregate value not exceeding the exemption limit means the sum total of first clearance during the financial year towards the gross amount, as prescribed under Section 67 of the Act, charged by service provider towards taxable services till the aggregate value of such payment is equal to the exemption limit but does not include payments received towards such gross amount which were exempted from the whole of Service Tax leviable thereon under Section 66 of the Act or under any other Notification. I further find that the services which are exempted from payment of Service Tax under Notification No. 25/2012-Service Tax dated 20.06.2012, the receipts in respect of such exempted service are not to be taken into consideration for arriving at aggregate value of clearance for the purpose of Small Scale Exemption Notification.

11. My views confirmed by Hon'ble CESTAT Allahabad in the case of M/s. Vishwanath Mishra Vs. Commissioner of Central Excise, Lucknow as reported at 2019 (22) G.S.T.L. 271 (Tri.-All.) wherein it has been held that "4. Having considered the rival contention and on perusal of Explanation "B" to the said Notification No. 6/2005-S.T., dated 1-3-2005, I find that the said explanation ~~authorizes exclusion of consideration received towards providing service which~~ are exempt from whole of Service Tax leviable thereon..." Therefore, as per Notification No. 33/2012-Service Tax, the value of taxable services is below



threshold limit of Rs. 10 lakh and hence the Appellant is eligible for the benefit of Notification No. 33/2012-Service Tax and not liable to Service Tax.

12. Thus, I hold that since the value of taxable service is well below the exemption limit envisaged under Notification No. 33/2012-Service Tax dated 20.06.2012, the Appellant is not liable to pay Service Tax. Once the Service Tax is not sustainable, levy of interest and imposition of penalties is not warranted at all.

13. In view of discussions and finding, I set aside the impugned order and allow the appeal filed by the Appellant.

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

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

सत्यपित / Attested

Supintendent
Central GST (Appeals)
Rajkot

By R.P.A.D.

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

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| To, M/s. Pravinsinh Kanubhai Jadav, Flat No. 401, Shivshakti Apartment, B/h Mahatma Gandhi Hospital, Wadhwan City, Dist.: Surendranagar 363020 | सेवा में, मे. प्रवीणसिंह कनुभाई जादव, फ्लैट सं. 401, शिवशक्ति अपार्टमेंट, महात्मा गांधी अस्पताल के पीछे, वडवाण सिटी, जिल्ला: सुरेन्द्रनगर - 363020. |
|---|---|

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 मण्डल, सुरेन्द्रनगर को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फाइल।



