



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

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रजिस्टर्ड टैक्सपेयर्स द्वारा :-

DIN-20221164SX000000E5CD

क	अपील / फाइल संख्या / Appeal / File No. V2/526 / RAJ/2021	मूल आदेश / OIO No. 20/JC(MAN)/2021-22	दिनांक / Date 30-09-2021
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ख अपील आदेश संख्या (Order-In-Appeal No.):

**RAJ-EXCUS-000-APP-358-2022**

आदेश का दिनांक / Date of Order:	<b>31.10.2022</b>	जारी करने की तारीख / Date of issue:	<b>02.11.2022</b>
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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. Sunrise Enterprise, 235, Backbone Shopping Center, Mayani Chowk, Chandreshnagar Main Road, Rajkot**

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) वार्गीकरण भूखण्डन 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 बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 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, Asawa 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) नियमवली, 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 मॉग, ब्याज की मॉग 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 रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयंन 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. 5,000/-, 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 नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मॉग, ब्याज की मॉग 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 रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्वयंन 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 fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is Rs. 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 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 प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रामाणित होनी चाहिए) और आवेदक द्वारा राहातक 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 93 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 जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि इस करीब रूप से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल हैं  
(i) धारा 11 डी के अंतर्गत रकम  
(ii) सेनबेट जमा की ली गई गलत राशि  
(iii) सेनबेट जमा नियमावली के नियम 6 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 स्थान अर्थात् अपील को लागू नहीं होंगे।  
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 पुनरीक्षण या चिन्ता निम्नलिखित मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक 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 या रजिस्ट्रार 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 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 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 निर्यात की गई संशुद्ध अथवा समायाचिधि 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 उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संशेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आवेदन 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 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।  
जहां संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।  
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.  
(D) यदि इस आदेश में कोई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त इस से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा पत्रों द्वारा से बचने के लिए सहायित 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-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 बर्णित एवं अन्य संबंधित मामलों को सम्मानित करने वाले नियमों की और भी ध्यान अर्कायित 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 भाषक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलाधी 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

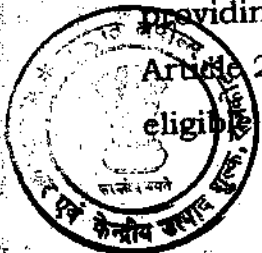
M/s Sunrise Enterprise, 235, Backbone Shopping Centre, Mayani Chowk, Chandreshnagar Main Road, Rajkot (*hereinafter referred to as 'Appellant'*) has filed Appeal No. V2/526/RAJ/2021 against Order-in-Original No. 20/JC(MAN)/2021-22 dated 22.09.2021 (*hereinafter referred to as 'impugned order'*) passed by the Joint Commissioner, Central Excise & CGST, Rajkot (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that as per data received from the Income Tax Department, the appellant appeared to have received various amounts as consideration for providing taxable service. It appeared that the appellant had not obtained registration under Service Tax Rules and did not pay service tax on the consideration received for providing taxable service. The appellant, in spite of being asked by the jurisdictional officer, did not produce any details or information about the nature of service provided by them.

2.1 Based on the data provided by the Income Tax department, a Show Cause Notice No. V.ST/Div-I-RJT/JC/AS/47/2020-21 dated 29.09.2020 was issued to the Appellant calling them to show cause as to why the value of taxable services provided by them during the period F.Y. 2014-15 should not be assessed/determined at Rs.4,66,23,291/- under Section 72 of the Finance Act, 1994 and service tax amount of Rs.57,62,639/- should not be demanded and recovered from them under proviso to Section 73(1) of the Act, along with interest under Section 75 of the Act, and proposing imposition of penalty under Sections 77 and 78 of the Act.

2.2 The above Show Cause Notice was adjudicated vide the impugned order whereunder the adjudicating authority dropped the demand for Rs.55,81,024/- and confirmed the demand of Rs.1,81,615/- under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Act. He also imposed penalty of Rs.1,81,615/- under Section 78 and Rs. 10,000/- under Section 77(1)(a) and Rs.10,000/- under Section 77(2) of the Finance Act, 1994.

3.1 Being aggrieved, the Appellant has filed the present appeal contending, *inter alia*, that service provided to Government Authority is exempted from payment of Service tax. They submitted that Tourism Corporation Gujarat Limited (TCGL) is 'government authority' established by Government of Gujarat with more than 90% shares by Government of Gujarat to promote cultural aspects of heritage of Gujarat. They submitted that TCGL is also engaged in providing urban amenities and facilities which are specified activities under Article 243W of the Constitution of India. The appellant contended that they are eligible for exemption under Notification No.25/2012-ST. The appellant also



*[Handwritten Signature]*

submitted that in the case of M/s Tirupati Developers, Rajkot where the services were provided to M/s TCGL, the demand was dropped by original authority and was accepted by the jurisdictional Commissioner.

3.2 The appellant submitted that APMC is also a Government Authority as it has been set up by the Gujarat State Legislature through the Gujarat Agricultural Produce Markets Act, 1963 and hence service provided to them is also exempted vide Notification No.25/2012-ST.

3.3 The appellant submitted that services were provided by the appellant to M/s TCGL and APMC under the impression and understanding that it was 'Governmental authority'. If a Governmental authority itself claims that it is a governmental authority then a common assessee must not have any doubt regarding that.

3.4 The appellant submitted that show cause involving partial reverse charge mechanism may not be adjudicated independently. They submitted that the proper recourse in such situation ought to be analysis of service tax applicability on the activity by the jurisdictional officers of the service recipient and if show cause notice was required to be issued, a common adjudicating authority might have been appointed for adjudication.

3.5 The appellant contended that show cause notice and the consequential order issued without investigation and only based on the data provided by the income tax department as per TDS and IT return is not sustainable in law. They submitted that High Court of Bombay in the case of *Amrish Rameshchandra Shah-2021-TIOL-583-HC-MUM-ST* had quashed identical show cause notice in which service tax was demanded without any verification and based only on the data provided by the Income Tax authorities.

3.7 The appellant submitted that the value arrived for demand of service tax by resorting to Section 72 of the Finance Act 1994 is in gross violation of the mandate and procedures mentioned in Section 72 itself. They relied upon following case laws:

- (i) *Creative Travel Pvt Ltd-2016 (45) STR.33 (Del)*
- (ii) *Carlsberg India Pvt. Ltd-2016 (42) STR.55 (Tri-Del)*
- (iii) *Coca Cola (I) Pvt. Ltd-2015 (40) STR.547 (Tri-Del)*
- (iv) *NBC Corporation Ltd-2014 (33) STR.113 (Del)*

3.8 The appellant submitted that the allegations/findings of non-disclosure of true and correct details are baseless. They contended that there was no suppression at all and as such the show cause was time barred. The entire details have been taken from TDS returns, Income Tax returns, 26AS and ST-3 returns and as such it is not forthcoming as to how the details were suppressed from the department. The appellant relied upon following case laws:



*Am*

- (i) *Oriental Insurance Co. Ltd-2021-TIOL-307-CESTAT-DEL*
- (ii) *Blackstone Polymers-2014 (301) ELT.657 9Tri-Del*
- (iii) *Kirloskar Oil Engines Ltd-2004 (178) ELT.998 (Tri-Mum)*
- (iv) *Hindalco Industries Ltd-2003 (161) ELT.346 (Tri-Del)*

The appellant also referred to Circular No.1053/02/2017-CX dated 10.03.2017.

3.9 The appellant submitted that in the case of interpretation of law, no penalty is imposable. They further submitted that to impose penalty under Section 78 of the Act, existence of suppression etc. is basically required to be proved which is completely absent in the present case. They relied upon the following case laws:

- (i) *Tamil Nadu Housing Board-1994 (74) ELT.9 (SC)*
- (ii) *Town Hall Committee, Mysore City Corporation-2011 (24) STR.172 (Kar)*
- (iii) *BSNL-2008 (9) STR.499 Tri-Bang)*

4. Shri R.C. Prasad, consultant appeared for personal hearing. He made submission of written arguments for person hearing with relevant provision extracts. He reiterated the submissions made therein and those in the grounds of appeal. He drew attention to the definitions of government as provided in the Finance Act 1994 and in the notification 25/2012-ST dated 20.06.2012 which include any body set up by an Act of State Legislature. He also drew attention to the page 56 of the appeal memorandum wherein an extract of report No.2 of 2015 by CAG in respect of TCGL is kept. Based on the same he argued that the services provided to TCGL and to APMC clearly qualified as services to a government body. He also drew attention to para 20.1 of the Order-in-original wherein the adjudicating authority has erroneously observed/relied on the factor that services provided by APMC are taxable. He also drew attention to Order-in-Original No.40/D/AC/2017-18 dated 28.02.2018, wherein relying on an order by Commissioner Rajkot had held TCGL to be a Government authority, demand was dropped. Finally he drew attention to page 74 and 75 of the appeal memo, wherein from the ledger account extracts, it is seen that the same pertains to the period 01.04.2014 to 31.03.2015 for which the demands became time barred before the show cause notice was issued, even if extended period is invoked. Therefore, he requested to set aside the Order-in-Original *in-toto* and drop the proceedings after granting relief from the demand, interest and penalty by the lower authority.

5. I have carefully gone through the facts of the case, the impugned order, grounds of appeal in the appeal memorandum and oral as well as written submissions made by the Appellant. As per the facts available on record, the demand was made on the on the basis of data provided by the Income Tax department. Though the documents related to the income shown in the returns of Income Tax department were called for by the jurisdictional CGST officer, the appellant did not provide them. The appellant has submitted the documents at



*Chy*

the time of adjudication. From the work order, the adjudicating authority found that the appellant had provided works contract services to the Government/local authority, Tourism Corporation Gujarat Ltd (TCGL) and Agricultural Produce Market Committee (APMC). The adjudicating authority has observed that the works contract service provided by appellant to TCGL and APMC are not covered under exemption Notification No.25/2012-ST. Therefore he confirmed the demand of Rs.1,81,615/-under partial reverse charge as per Notification No.30/2012-ST and dropped the rest of demand. Thus issue to be decided in this case is whether the impugned order, in the facts and circumstances of the case, confirming the demand against the service provided to TCGL and APMC with penalty is legal and proper.

6. In this regard, I find that, the adjudicating authority has confirmed the demand of service tax on the service provided to TCGL on the premises that the said organization does not carry out any functions defined under various Articles of Constitution but is commercial entity. On the contrary, the appellant argued that Tourism Corporation Gujarat Limited (TCGL) is 'government authority' established by Government of Gujarat with more than 90% shares by Government of Gujarat to promote cultural aspects of heritage of Gujarat. They submitted that TCGL is also engaged in providing urban amenities and facilities which are specified activities under Article 243W of the Constitution of India. The appellant contended that they are eligible for exemption under Notification No.25/2012-ST. Sr. No.12 of Notification No. 25/2012-ST reads as under:

*"12. 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) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;*
- (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);*
- (c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;*
- (d) canal, dam or other irrigation works;*
- (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or*
- (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act;"*

7. Paragraph 2(s) of Notification No.25/2012-ST defined 'governmental authority' as under:

*"(s) "governmental authority" means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution;"*



8. I further find that the definition of 'governmental authority' was amended by Notification No. 2/2014-S.T., dated 30-1-2014 and the amended definition reads as under:

"(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;"

9. From the above referred provisions, it is evident that (i) an authority set up by an Act of Parliament or a State Legislature and (ii) a body set up by an Act of Parliament or a State Legislature are considered as 'governmental authority' for the purpose of this notification. I find that prior to its amendment on 30.01.2014, both these conditions were required to be fulfilled for considering an entity as 'Governmental Authority'. However, with effect from 30.01.2014, as a result of the amendment made, the fulfillment of any of the above two conditions was sufficient for the said purpose.

10. In the present case, I find that, the appellant had provided service to TCGL towards interior decoration of its offices. Since TCGL is a company set up by Government of Gujarat with more than 90% of participation by it, TCGL is to be considered as a Governmental Authority for the purpose of the said notification. Another condition that is essential for granting exemption is that the body created should carry out any function entrusted to a municipality under article 243W of the Constitution. Article 243 W read as under:

\*Article 243 W

1. Urban planning including town planning.
2. Regulation 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 up-gradation.
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 ponds; 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 slaughterhouses and tanneries."

In this regard, I find that fact that TCGL promotes cultural heritage of Gujarat and promotes tourism. Promotion of cultural, educational and



aesthetic aspects is covered under Article 243W of the Constitution of India as mentioned above, and hence, the service provided to TCGL, in my considered opinion, is exempted vide Sr. No.12 of Notification No.25/2012-ST. As such, the value of Rs.45,35,594/- provided to TCGL is not taxable and the demand of service tax of Rs.1,70,568/- is not sustainable.


12. As regarding the service provided to APMC is concerned, the appellant contended that APMC is also a Government Authority as it has been set up by the Gujarat State Legislature through the Gujarat Agricultural Produce Markets Act, 1963 and hence service provided to them is also exempted vide Notification No.25/2012-ST. However, I find that even though it is a body set up through legislation by Gujarat State Legislature through the Gujarat Agricultural Produce Markets Act, 1963, the activity carried out by APMC is not covered under the activities mentioned under article 243W. As such the benefit of exemption under Notification No.25/2012-ST cannot be extended to the service provided to APMC. However, I find that the value of service provided to APMC is below the threshold of 10 lakhs as provided under Notification No.33/2012 dated 20.06.2012 and hence no demand of service tax arises. Thus the entire demand of service tax becomes not sustainable and hence there arises no question of imposing any penalty.

13. In view of the above, I allow the appeal and set aside the impugned order to the extent of confirming the demand of service tax, charging interest and imposing penalty.

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

14. The appeal filed by the 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 Sunrise Enterprise, 235, Backbone Shopping Centre, Mayani Chowk, Chandreshnagar Main Road, Rajkot	सेवा में, मे० सनराइस एंटरप्राइज़ 235, बॅक बोन शॉपिंग सेंटर मायानि चौक, चंडरेशनगर मईन रोड राजकोट
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प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट
- 3) ऊप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट -I मंडल, राजकोट आयुक्तालय,
- 4) गार्ड फाइल।

