

	: : आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा कर और केन्द्रीय उत्पाद शुल्क : : O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE	 सत्यमेव जयते
	द्वितीय तल, जी एस टी भवन / 2 nd Floor, GST Bhavan रेस कोर्स रिंग रोड / Race Course Ring Road राजकोट / Rajkot - 360 001 Tele.Fax No. 0281 - 2477952/2441142 Email: commrapp13-cexamd@nic.in DIN20230264SX0000999EA3	

क अपील / फाइल संख्या / मूल आदेश सं / दिनांक / Date
 Appeal / File No. O.I.O. No. 13-03-2022
 V2/40/BVR/2022 414:/SERVICE
 TAX/DEMAND/2021-22

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

BHV-EXCUS-000-APP-032-2023

आदेश का दिनांक /

Date of Order:

31.01.2023

जारी करने की तारीख /

Date of issue: 07.02.2023

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 / गांधीधामा 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. Keyur Gunvantra Patel, GF Thakar Dwara Street, Kanbiwad, Bhavnagar

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दाखल 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 अपीलार्थी न्यायाधिकरण के प्रांत 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 GEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) वर्गीकरण मुद्दांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थी 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 अपीलार्थी न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd Floor, Bhaumali Bhawan, Aasarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलार्थी 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 जुमाना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलार्थी 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 अपीलार्थी न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

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

B)

अपीलार्थी 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 जुमाना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलार्थी 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 अपीलार्थी न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

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



- (ii) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति 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 of 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 (सेन्टेट) 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 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 दस करोड़ रुपये से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
- धारा 11 की के अंतर्गत रकम
 - सेनवेट जमा की ली गई गलत राशि
 - सेनवेट जमा निवमानवली 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 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 :
- amount determined under Section 11 D;
 - amount of erroneous Cenvat Credit taken;
 - 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 कोपनरीक्षण 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 अंतर्गतअवर 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-35E ibid:
- 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
 - भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर चरी 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.
 - 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.
 - सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी केडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाविधि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
 - उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमवाली 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 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 O/O 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.
 - 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 आवेदों का समावेश है तो प्रत्येक मूल आवेदन के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पत्रों से बचने के लिए बयास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आवेदन एवं स्थगन आवेदन 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) नियमवाली, 1982 में बर्णित 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 व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट 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.



:: अपील आदेश / ORDER-IN-APPEAL ::

M/s. Keyur Gunvantrai Patel, Bhavnagar (hereinafter referred to as "Appellant") has filed Appeal No. V2/40/BVR/2022 against Order-in-Original No. 414/SERVICE TAX/DEMAND/2021-22 dated 13.03.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST Division, Bhavnagar-1 (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 2015-16 & 2016-17 the Appellant. Letter dated 26.08.2019 and summons dated 16.07.2020, 27.07.2020 & 28.08.2020 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, 2015-16, 2016-17 & 2017-18 (upto June-2017). However, no reply was received from the Appellant. The Appellant failed to submit the required details and it was also observed that the no service tax returns were filed by the Appellant from April-2015 to March-2017. With effect from 01.07.2012, the negative list regime was introduced under which all services were taxable and only those services that were mentioned in the negative list, were exempted. Since, the Appellant has not submitted the required details despite reminders by the jurisdictional Range Superintendent as the service tax liability was required to be ascertained, the figures mentioned in the ITR/26As provided by the Income Tax Department are considered as the total taxable value in order to ascertain the service tax liability.

3. In absence of data/information, a show cause notice dated 18.09.2020 was issued to the Appellant, demanding Service Tax and cess to the tune of Rs. 14,28,037/- 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 76, 77(2), 77(3)(c) and Section 78 of the Act.

4. The adjudicating authority vide the impugned order confirmed Service Tax demand of Rs. 14,28,037/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs. 14,28,037/- under Section 78 and penalty of Rs. 5,000/- each under Section 77(1)(a), 77(2) and 77(1)(c) of the Act. The Adjudicating Authority do not impose penalty under Section 76 of the Act.

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



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- (i) All accounts/ returns pertaining to the period under reference had been scrutinized/ audited by the Income Tax Department who verified to arrive the genuine and correct taxable value but in the case on hand the subject show cause notice appears to had been issued without thorough verification of the reports returns etc. filed under the provisions of Act. The show cause notice have been issued on the assumption and presumption grounds and is time barred.
- (ii) The Appellant was engaged in carrying out works of repair of vessels/ships on the basis of contract/ agreement made with Gujarat Maritime Board (GMB). The GMB providing such place coming under the Territory of designated ports wherein such goods are used to load and use to unload for furtherance purposes either for export etc. They dealt with only to provide manpower to such vehicles, fresh water on board of the respective vessels anchored meant for repairing work etc. After completion of repairing work upon the respective vessel, they had no any control over the repaired vessel for furtherance carrying out business with the sea water. Thus, the impugned order passed without verifying the factual position of the business carried out by the Appellant.
- (iii) They had carried out repairing works of vessels which was subsequently not used in or in relation for "home consumption" and hence as per Section 46 of the Customs Act, 1962, the question of levy of service tax does not arise as levy of service tax is far away from the statutory provisions of the Act. The work carried out upon the sea going vessel is to be termed as provided in or in relation to goods to be exported or the goods imported into India and hence the impugned order may be set aside.
- (iv) The customs works pertaining to the port Jamnagar is falling under the Commissionerate of Jamnagar and the port authorities are directly nexus with each other who are also looking after the respective allotted work of export and import and providing port facilities. These all activities carried out only and on in respect of such goods either meant for export of import as the case may be by utilizing the place of GMB. These all activities well known to the department since before the period involved in the present issue. Therefore, the subject Show Cause Notice was time barred since all such activities carried out by the Appellant were well known to the department.
- (v) The department determined the assessable value based on data of income tax department. The assessable value under the provisions of the Act and under the provisions of Income Tax law are separate to each other and may not be applicable in the nature and style as common for issuance of show cause notice.
- (vi) The Appellant was not liable to pay service tax on repairing works carried



[Handwritten signature]

out in or in relation to building of Port which is not be termed as "Commercial purpose" and used within the territory of designated port and not outside the port area. Therefore, they were not liable to pay the Service Tax on the work which was nothing but part and partial of "port work" which was always being consider while fixing the tariff of port.

6. Personal hearing in the matter was held on 10.01.2023. Shri N. K. Maru and Shri U. H. Qureshi, Consultant appears for personal hearing and reiterated the submissions in the appeal and those in the additional written submissions handed over during the personal hearing. They submitted that the appellant was providing maintenance and repair service of vessel/ ship through the Gujarat Maritime Board. The liability of service tax on the appellant was only 50% as per Notification No. 30/2012 dated 20.06.2012 Sr. No. 9 and the remaining 50% liability was on the recipient of service on Reverse Charge Mechanism basis. They submitted that although the appellant had not filed S.T.-3 returns for F.Y. 2015-16 and 2016-17, they had discharged payment of Service Tax through challan, a copy of which is enclosed with the appeal. They undertook to submit a calculation sheet for their liability in this regard within a week and requested to set aside the impugned order.

6.1 The additional submission handed over during the personal hearing is akin to grounds of appeal and further they stated that Service Tax was required to be paid by them on reverse charge mechanism on 50% by them and 50% by GMB which they have already paid and submitted copies of TR-6 challans evidencing payment thereof to the Government. The Appellant vide their letter dated 12.01.2023 have submitted statement showing details of challan number and date under which they have paid Service Tax. They were not liable to Service Tax as their service is exempt vide Sr. No. 25 of Notification No. 25/2012-Service Tax dated 20.06.2012.

7. I have carefully gone through the case records, impugned order and appeal memorandum filed by the Appellant. The issue to be decided in the case on hand is that whether the Appellant is liable to pay service tax on activity carried out by them or not.

8. The Appellant has submitted the copy of Service Tax registration certification with the appeal memorandum wherein it has been mentioned that the Appellant is registered for carrying out services of "construction services other than residential complex, including commercial/ industrial buildings or civil structures" and hold the Service Tax Registration No. ABKPP8516DSD001.

9. I find that Show Cause Notice had been issued without verifying any data nature of services provided by the Appellant as the same had been issued only



Shri

on the basis of data received from the Income Tax department. The Adjudicating Authority decided the Show Cause Notice by passing ex-parte order since no reply received from the Appellant nor the Appellant appeared for personal hearing. The demand of Service Tax is for the year 2015-16 & 2016-17. The Appellant has provided Form 26AS for the year 2014-15, 2015-16 & 2016-17.

10. During the financial year 2015-16, they have taken annual maintenance contract for repairs to flotilla unit at Bhavnagar Port valued at Rs. 18,76,453.72 and obtained work order for minor repairs to under water portion of Tug Jay Somnath at Bhavnagar Port valued at Rs. 4,52,938.72. They have produced copies of R.A. Bills wherein GMB has calculated Service Tax after deducting abatement and also mentioning that 50% Service Tax to be paid by the Appellant and remaining 50% to be paid by GMB. On verification of R. A. Bills produced by them, it is clear that the Appellant have paid Service Tax during the year 2015-16 and on production of payment evidence, the GMB processed and passed the R.A. bills of the Appellant. Thus, the Service Tax for the year 2015-16 is paid by the Appellant and no demand stands against the Appellant.

11. During the financial year 2016-17, the Appellant carried out work awarded by the Gujarat Maritime Board for repair & maintenance of (i) M & R to M. L. Gitanjali at Navlakhi Port (ii) Sp. Repairs to MS Gates of Dry Dock at Porbandar Port (iii) Docking Survey & Repairs of tug GMB-II of Porbandar Port (iv) S. R. to work boat Rangoli at Porbandar Port. On verification of Form 26AS and books of account for the year 2015-16, the Appellant have earned income from GMB Works contract income as account for by Executive Engineer (Mech) and Office of the Executive Engineer. On verification of copies of some of the R.A. Bills for the year 2016-17 submitted by the Appellant, it is evident that the GMB has calculated the Service Tax on 70% of total taxable value (after deducting abatement of 30%) and also mentioned that 50% Service Tax payable by GMB and 50% Service Tax payable by the Appellant. The Service Tax is calculated and included in the Running Account Bill and the same is reimbursed by GMB to the Appellant on production of copy of T.R.-6 challan. The Appellant produced the copies of the TR-6 challans evidencing payment of Service Tax based on which the GMB has processed their bills for payment.

11. It is the contention of the Appellant that they are not liable to Service Tax on repair and maintenance of vessel/ ship/ tug etc. since the same is covered under mega exemption Notification No. 25/2012-Service Tax dated 20.06.2012. However, as insisted by GMB, they were compelled to take registration and paid the Service Tax as directed by GMB. Otherwise, they could not get the contract work from GMB as there was pre-condition to obtain Service Tax registration and pay Service Tax. Therefore, they have paid Service Tax and



15/

on production of TR-6 challan for payment of Service Tax, the GMB processed and passed their R.A. Bills. The relevant excerpts of Notification No. 25/2012-Service Tax dated 20.06.2012 are as under:

25. Services provided to Government, a local authority or a governmental authority by way of

(a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or

(b) repair or maintenance of [a vessel];

The Appellant carried out repair work to vessel M. L. Gitanjali at Navlakhi Port, Repairs of tug GMB-II at Porbandar Port and to boat Rangoli at Porbandar Port. However, I find that GMB is not a governmental authority but a body corporate as per Section 3(2) of the Gujarat Maritime Board Act, 1981 which reads as under:

"(2) The Board shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act to acquire, hold and dispose of property, both movable and immovable, and to contract, and may by the said name sue and be sued."

Therefore, I find that the services provided by the Appellant to GMB by way of repair or maintenance of vessel/ tug/ boat are not within the ambit of mega exemption Notification No. 25/2012-Service Tax dated 20.06.2012. Thus, the argument advanced by the Appellant is devoid of any merit as GMB is not a government nor a local authority or a governmental authority.

12. Further, on plain reading of copies of T.R.-6 challans/ R.A. Bills for the year 2015-16 & 2016-17, it is on record that the GMB calculated the Service Tax on abated value of 70% as applicable. GMB has also mentioned Service Tax amount of 50% to be paid by them and 50% to be paid by the Appellant. The Appellant produced copies of such R. A. Bills/ T.R.-6 challans evidencing payment to government. Therefore, it is amply clear that whatever Service Tax calculated by the GMB was paid by the Appellant and production of proof of payment, the GMB released the payment of such R.A. Bills to the Appellant.

13. In view of the above, 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.

सत्यापित / Attested

[Signature]

[Signature]
(शिव प्रताप सिंह)/(Shiv Pratap Singh),

आयुक्त (अपील)/Commissioner (Appeals)

By R.P.A.D.

Superintendent
Central GST (Appeals)
Rajkot



To, M/s. Keyur Gunvantrai Patel, GF, Thakar Dwara Street, Kanbiwad, Bhavnagar.	सेवा में, मे० केयूर गुणवंतराय पटेल, GF, ठाकर द्वार शेरी, कणबीवाड, भावनगर।
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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/सयुक्त 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-1 मण्डल को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फ़ाइल।

