

	: 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: commrappl3-cexamd@nic.in DIN20230264SX000044704B	

क अपील / फाइल संख्या / मूल आदेश सं / दिनांक / Date
 Appeal / File No. O.I.O. No. 21-06-2022
 GAPPL/COM/STP/2410/2022 BHV-EXCUS-000-JC-LD-037-2022-23

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

BHV-EXCUS-000-APP-065-2023

आदेश का दिनांक /
 Date of Order:
 20.02.2023

जारी करने की तारीख /
 Date of issue: 21.02.2023

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. Pushpak Construction, 205-206, Ratnadeep Complex Opp. Central Salt, Waghawadi Road Bhavnagar-364001

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। / Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /

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

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, 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, 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, जहां उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना, 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 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/- 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)

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 सकेगी 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 माँग, ब्याज की माँग और लगाया गया जुर्माना, 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 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/- 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 fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9 (2) एवं 9 (2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा 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 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 For 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 (सेस्टेट) के प्रति अपीलों 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 जर्माना विवादित है, या जर्माना, जब केवल जर्माना 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
(x) धारा 11 डी के अंतर्गत रकम
(xi) सेनवेट जमा की ली गई गलत राशि
(xii) सेनवेट 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 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 :
(x) amount determined under Section 11'D;
(xi) amount of erroneous Cenvat Credit taken;
(xii) 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 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 ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा 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 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 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।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पट्टी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण 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 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 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 संबन्धित 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 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. Pushpak Construction, Bhavnagar (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. BHV-EXCUS-000-JC-LD-037-2022-23 dated 21.06.2022 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST, 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 for the Financial year 2015-16 & 2016-17 of the Appellant. Letter dated 16.04.2021 was 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 2015-16 to 2017-18 (upto June-2017). However, no reply was received from the Appellant.

3. In absence of data/information, a Show Cause Notice dated 22.04.2021 was issued to the Appellant, demanding Service Tax and cess to the tune of Rs. 1,19,92,945/- 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 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. 54,37,501/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs. 54,37,501/- under Section 78 of the Act, imposed penalty of Rs. 10,000/- each under Section 77(1)(a), 77(2) and 77(1)(c) of the Act. The Adjudicating Authority dropped the demand of Rs. 65,55,444/-.

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

(i) The impugned order passed by the Adjudicating Authority is erroneous and has failed to appreciate the facts available on record as well as legal provisions of the Act while passing impugned order and also travelled beyond the scope of the show cause notice. Therefore, impugned order is liable to be set aside on this ground. The Adjudicating Authority failed to appreciate the fact placed before him regarding copy of Contract in Form B-2 - "Item Rate Tender and Contract for Works" for Construction of Taluka Seva Sadan at Jesar, Dist. Bhavnagar duly signed by the main contractor namely M/s. Sorath Builders, Ahmedabad and Executive Engineer (R & B) Division, Bhavnagar was the contract



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and not the work Order dated 21.08.2015 or intentionally overlooked the same. He considered "Work Order No. Tender/301 dated 21.08.2015" issued by Executive Engineer, Bhavnagar issued to main Contractor M/s. Sorath Builders, Ahmedabad as contract over the said Form B-2 and thus, he has erred in confirming demand of Rs. 46,38,323/- (Rs. 25,68,342/- + Rs. 20,69,981/-) for on the abated value of Rs. 1,77,12,705/- and Rs. 1,37,99,872/- of value of Rs. 4,42,81,762/- and Rs. 3,44,99,681/- for the period of 2015-16 and 2016-17.

(ii) The Appellant further submitted that it is not matter of dispute that they had provided "Works Contract Service" as sub-contractor to the main contractor M/s. Sorath Builders, Ahmedabad who were awarded "Works Contract" by the State Government. M/s. Sorath Builders, Ahmedabad (hereinafter referred to as main contractor) had participated in Tender Floated by the Government of Gujarat for construction of "Taluka Seva Sadan at Jesar, Dist. Bhavnagar" and submitted "Item Rate Tender and Contract for Works" in Form B-2 by putting signature on each page with rubber stamp with other bidders. Superintending Engineer, (Rajkot R & B), Division-2, Rajkot vide letter No. PS/Tender/B/Rate/F.99/955 dated 06.02.2014 inter alia recommended to the Chief Engineer (R & B) and Additional Secretary, Road and Building, Gandhinagar for acceptance of Tender for the Construction of Taluka Seva Sadan, At Jesar, Dist. Bhavnagar of the said main contractor. The Deputy Secretary, Government of Gujarat, Road and Building, Gandhinagar vide letter F. No. BDG/57/2013/3457/N dated 26.02.2014 inter alia informed acceptance of tender subject to conditions stated therein. Therefore, on being acceptance of the tender same was signed by Executive Engineer (R&B) Division, Bhavnagar (at page 20 of the Item Rate Tender and Contract for Work) and on being signed it becomes contract within the meaning of Section 10 of the Contract Act, 1872. They submitted the self-certified copy of "Item Rate Tender and Contract for Works" Form B-2 page 1 to 54 executed between main contractor and Executive Engineer (R&B) Division, Bhavnagar, wherein the details of "Item Tender and Contract for Works" in Form B-2 at page 9, "Declaration Form inter alia declaring that I/We hereby declare that I/We have carefully studied the conditions of contract, specifications and other documents of this work and agree for execute the same accordingly." at page 13; similarly, at page 19 - Tender for Works - Memorandum clause (g) states that "Should this tender be accepted, I/we hereby agree to abide by fulfill all the terms and provisions of the Conditions of the contract annexed here to so far as applicable and in default thereof to forfeit and pay to the Government in Office the sum of money mentioned in the said conditions." Terms and Conditions of Contract are at page 20 to 54, therefore same is contract for work and not mere tender. It is further evident from the said pages that tender was for 2013-14. The Clause 1 of



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Terms & Conditions of Contract at page 20 of the Form B-2 - 'Item Tender and Contract for Works' inter alia provides that "The person/persons whose tender is accepted shall (a) deposit full security within a period of 10 days from the date of receipt of the Notification of accepting of his tender". Therefore as per the said clause 1 of Terms & Condition, on being acceptance of Tender on 26.02.2014 such notification i.e. Acceptance Order was issued vide Letter dated 10.08.2015 of Executive Engineer, Bhavnagar (R&B) Division, Bhavnagar for the work standing at Rs. 8,52,38,505.57 i.e. 9.37% below against the estimated cost of Rs. 9,40,52,478.77 with reference to the Government Office said Letter No. BDG: 57/2013/3457/N dated 26.02.2014 inter alia requesting to pay security deposit within 10 days. In the same way the Executive Engineer, Bhavnagar (R&B) Division, Bhavnagar vide letter dated 21.08.2015 had issued Work Order with reference to Government Office Letter No. BDG: 57/2013/3457/N dated 26.02.2014. The said Executive Engineer vide letter dated 13.03.2014 with reference to the said letter dated 26.02.2014 inter alia informed the conditions for carrying out work under Tender to the main contractor.

(iii) They further submitted that that letter dated 07.04/05.2016 bearing No. PB/B/Rate/quantity escalation/2473 of Superintending Engineer, Rajkot (R&B), Division No. 2, Rajkot addressed to Deputy Secretary(Building), R & B, Gandhinagar which was inter alia principally for acceptance & sanction of the proposal for additional quantity/additional work in Construction of Jila Seva Sadan at Jesar, Dist. Bhavnagar but endorsed the above submission at Sr. No. 4 of the table that letter dated 26.02.2014 was for acceptance of the tender. Thus, it is clearly evident from all these documents that Tender was accepted as per letter dated 26.0.2014 and become contract. Thereafter, notification for acceptance was issued on 10.08.2015 and subsequently with reference to letter dated 26.02.2014 work Order dated 21.08.2015 was issued. Therefore, such work order by any means cannot be considered as Contract. All these clearly prove that Tender cum Contract become contract when same was signed by the Executive Engineer and acceptance of tender subject to conditions specified therein was made vide letter dated 26.02.2014 therefore, contract is to be considered for the period prior to 01.03.2015 only and not date of Work Order. The learned Adjudicating Authority failed to appreciate that what was produced before him was not a mere tender but a copy of tender cum contract only. Therefore, the Adjudicating Authority has erred in considering the said documents as a mere tender and not contract and work order as contract.

(iv) They submitted that in the instant case Tender was duly signed by the main contractor and further signed by the Executive Engineer of (R&B) Division,



Bhavnagar, of Government of Government towards its acceptance therefore same was become the contract within the meaning of Section 10 of the Contract Act, 1872. The Tender cum Contract was made with the free consent of the parties viz. main contractor and Executive Engineer and both were competent to contract, for lawful consideration and with lawful objection and not expressly declared to be void. Thus, all the conditions for the purpose of considering the Tender as contract are fulfilled on being accepted and signed by the Executive Engineer. The same are not fulfilled in the work order dated 21.08.2015.

(v) They further submitted that the Adjudicating Authority failed to appreciate that it had not simply contested "Tender" as "Contract" but very specifically contested as submitted in para supra that how the said tender had become contract when it was signed by the Executive Engineer. Therefore, it is inappropriate on the part of the Adjudicating Authority in trying to find out meaning of tender and what is tender with regard to government work/in common parlance. Therefore, findings at para 3.8.1 of the impugned order is of no meaning. The agreement viz. tender is signed by the Executive Engineer, Bhavnagar towards its acceptance on behalf of Government as per said letter dated 26.02.2014 of Dy. Secretary, Road and Building, Gandhinagar (approving tender of main contractor) with reference to letter dated 06.02.2014 of Superintending Engineer, Rajkot (R & B), Division-2, Rajkot. In any case, Acceptance Order dated 10.08.2015 and Work Order dated 21.08.2015 addressed to the main contractor by any means cannot be considered as contract within the meaning of Section 10 of the Contract Act, 1872 that too on the grounds stated para 3.8.1 and 3.8.2 of the impugned order.

(vi) The Appellant submitted that the Adjudicating Authority has erroneously tried to find out difference between Tender and Work Order on grounds without understanding the above fact that tender cum contract of the main contractor was signed by the Executive Engineer on behalf of the Government as accepted and not for all the parties who had filled. The Work Order was issued to the contractor whose tender cum contract documents was signed as accepted. His findings at Para 3.8.3 are ridiculous, perverse. His findings that Work Order is a contract is enforceable by law are his imagination and without any legal base. If same is accepted then if one may violate the conditions of Work Order then he can be sued and not for the condition of Tender cum Contract. In the instant case Tender Cum Contract (Tender and Contract Form - B-2) very specifically provides 76 Terms and Conditions of Contract from page 20 to 54 and one is supposed to fulfill all the conditions including contract and acceptance order. The Work Order dated 21.08.2015 does not specify any condition on the contrary same is order for commencement of work. It very specifically called upon the



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main contractor to start the work of construction of Taluka Seva Sadan at Jesar, Dist. Bhavnagar. The said Work Order by any standard cannot be considered as Contract within the meaning of Section 10 of the Contract Act, 1872.

(vii) The Appellant submitted that it is not matter of dispute and also clearly reveals from the documentary evidences that it had provided services of Construction of governmental building which was predominantly for use other than for commerce, industry or any other business or profession as sub-contractor and such construction services were "works contract" within the meaning of Section 65B(54) of the Act. As per Sr. No. 12(a) and 12A(a) of the Notification No. 25/2012-ST dated 20.06.2012 as amended services provided to the Government by way of construction of a civil structure or any other original works as meant predominantly for use other than for commerce, industry, or any other business or profession read with Section 102(1)(a) of the Finance Act, 1994 were exempted provided that a contract which had been entered into prior to 01.03.2015.

(viii) As per Sr. No. 29(h) of the Notification No. 25/2012-ST dated 20.06.2012 as amended services by the sub-contractor by way of works contract to another contractor providing works contract services which are exempt, were exempted. Thus, supply of construction service as works contract services to the contractor in the capacity of sub-contractor were exempted for the contract entered prior to 01.03.2015. They further submitted that as per Government Office letter No. BDG/57/2013/3457/N dated 26.02.2014 contract of Construction of Taluka Seva Sadan at Jesar Dist. Bhavnagar viz. "Form B-2 Item Tender and Contract for Works" was executed prior to 01.03.2015 on being signed by the Executive Engineer, (R&B) Division, Bhavnagar as token of acceptance, therefore, no Service Tax was payable by it on the same as provided under the aforesaid provisions. They submitted that the income from services of Rs. 4,42,81,762/- of 2015-16 and Rs. 3,44,99,681/- out of Rs. 3,71,47,267/- of 2016-17 from the Table inserted in the Show Cause Notice as well as impugned Order at para 1.9 were exempted from levy of Service Tax vide said Sr. No. 12(a), 12A(a) and 29(h) of the Notification No. 25/2012-ST dated 20.06.2012 as amended read with Section 102(1)(a) of the Finance Act, 1994 as contract was entered into prior to 01.03.2015. Therefore, demand of Rs. 46,38,323/- (Rs. 25,68,342/- + Rs. 20,69,981/-) as worked out at para 3.12 of the impugned Order is liable to be set aside.

(ix) They further submitted that the Adjudicating Authority has grossly erred while confirming demand of Rs. 7,99,178/- (Rs. 3,80,337/- + Rs. 4,18,841/-) for the services of works contract provided to main contractor M/s. Khushi Construction. In the Show Cause Notice, Service Tax of Rs. 1,19,92,945/- was



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demanded on value of Rs. 4,42,81,762/- (F.Y. 2015-16) and Rs. 3,71,47,267/- (F.Y. 2016-17). As submitted in para supra duly supported with documentary evidence in form of Audited Balance Sheet (Income under the head of Sales read with Schedule 9) value of Rs. 4,42,81,762/- and Rs. 3,44,99,681/- were for Taluka Seva Sadan, therefore, service tax of Rs. 1,58,855/- was payable only on 40% of balance value Rs. 26,47,586/- (Rs.3,71,47,267/- minus Rs. 3,44,99,681/-) and not on the entire value of Rs. 1,33,19,624/- as mentioned in the Sales Income column of Profit and Loss Account read with Schedule 9 (Rs. 69,80,682/- + Rs. 63,38,942/- for Observation Home and Sub-Registrar Office, Bhavnagar received from M/s. Khushi Construction, Bhavnagar) of 2016-17. While raising the demand the department had taken only value of Rs. 26,47,586/- for 2016-17. Therefore, service tax of Rs. 6,40,322/- on 40% of Rs. 1,06,72,038/- (Rs. 1,33,19,624/- minus Rs. 26,47,586/-) in excess of that amount is erroneously confirmed by travelling beyond the show cause notice. In other word, there was no demand of Service Tax on the said value of Rs. 1,06,72,038/- received from M/s. Khushi Construction, Bhavnagar against said two works contracts, therefore, same cannot be confirmed and demanded under sub-section (2) of Section 73 of the Act.

(x) As per sub-section (2) of Section 73 of the Act the Central Excise officer can determine the amount of service tax not being in excess of the amount specified in the notice. In the instant case, the Adjudicating Authority has determined the amount in excess of the amount specified in the notice as the value of Rs. 1,06,72,938/- and Service Tax of Rs. 6,40,322/- on 40% of said amount were never specified in the show cause notice. The Appellant without admitting anything and without prejudice to above submitted that in any case service tax is demanded based on data received from the Income Tax department viz. Form 26As, wherein TDS was made under Section 194C of the Income Tax Act, 1962 as "Payments to Contractors". Even Audited Balance sheets were uploaded with Income Tax Returns filed for the said two years and the said income of Rs. 1,06,72,938/- was reflected in the audited Balance Sheet for F. Y. 2016-17. It was also evident from the balance sheet that it had provided works contract services. Therefore, department was bound to make valuation of services portion in the execution of works contract as provided under Rule 2A of Service Tax (Determination of Value) Rules, 2006. However, department has demanded service tax on the entire value instead of value determined under clause (i) or (ii) of Rule 2A ibid. Therefore, demand in excess of such value is in any case liable to be set aside.

(xi) It is also admitted facts from the letter date 24.04.2021 and impugned Show Cause Notice that they were registered with Service Tax department vide



Registration No. AARFP1749GSD001. However, the Adjudicating Authority found that the appellant failed to obtain Service Tax Registration and intentionally withholding of material information/facts from the department, failed to furnish information documents in response to letter dated 16.04.2021. Merely not filing of ST-3 returns on the bona fide belief that services provided by them were exempted from service tax and not required to file nil return, by any means amount to suppression of facts etc. The demand for the period 2015-16 and 16-17 were badly time barred as there was no suppression of facts etc. Income figures taken in the impugned notice were already recorded in books of accounts and declared before the income tax authorities. It is settled position of law by Hon'ble Apex Court that merely failure to take registration or pay tax/duty if any does not amount to suppression etc. Something positive other than mere inaction or failure on the part of the service provider or conscious or deliberate withholding of information when the service provider knew otherwise, is required to be established by the department for invoking extended period. The Show Cause Notice was required to be served within 18 months from the relevant date and here return for the last six months of October, 2016 to March, 2017 was required to be filed on or before 25th April, 2017. If one may count 18 months from the said date impugned show cause notice was required to be issued on or before 25th October, 2018. Whereas impugned show cause notice is issued on 22.04.2021 so same is badly time barred. That time limit of 18 months was made 30 months with effect from 14.05.2016 but same cannot be applied retrospectively to the present case as dispute is for the period prior to 14.05.2016, it may apply to the period from 14.05.2016 to 31.03.2017.

(xii) The placed reliance upon following decisions in the case of

PADMINI PRODUCTS Versus COLLECTOR OF C. EX. - 1989 (43) E.L.T. 195 (S.C.)

COLLECTOR OF CENTRAL EXCISE Versus CHEMPHAR DRUGS & LINIMENTS - 1989 (40) E.L.T. 276 (S.C.)

CBEC now CBIC vide Circular No. 1053/2/2017-CX., dated 10-3-2017 has also clarified the same at following paragraphs:

COLLECTOR OF C. EX., VADODARA Versus DHIREN CHEMICAL INDUSTRIES IN THE SUPREME COURT OF INDIA [CONSTITUTIONAL BENCH] - 2002 (139) E.L.T. 3 (S.C.)

CBEC now CBIC vide Instruction F. No. 201/01/2014-CX.6, dated 26-6-2014 has also directed the field formation to follow judicial discipline in adjudication.

(xiii) They submitted that in view of the above it is not liable to pay any amount of service tax during the said period and thus not liable to pay any interest and penalty, therefore, impugned order is liable to be set aside. They further submitted that in any case at the most service tax of Rs. 1,58,855/- on



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the 40% of Rs. 26,47,586/- is payable on the works contract service provided for Construction of Sub-Registrar and Survey Bhavan and Observation Home Bhavan. The Adjudicating Authority by travelling beyond the scope of the Show Cause Notice has imposed penalty under Section 77(1)(a) for failure to obtain the Service Tax Registration. In the impugned show cause notice there was no such proposal to impose penalty under Section 77(1)(a) of the Act on the ground of not obtained Service Tax Registration. In the Show Cause Notice and Order-In-Original that it was registered under the Service Tax department and therefore, order imposing penalty of Rs. 10,000/- under Section 77(1)(a) is liable to be quashed. They are not liable to penalty under Section 77(1)(c) as they have provided the details in response to Show Cause Notice dated 22.04.2021.

6. The matter was posted for hearing on 01.03.2023. Advocate Shri P. D. Rachchh appeared for personal hearing and reiterated the submissions in the appeal. He submitted that the contract of M/s. Sorath Builders, the main contractor with the Gujarat State Road, & Building Department is dated 26.02.2014 (P/167 of appeal). However, the Adjudicating Authority has taken the date mentioned in the acceptance letter and works order issued to the appellant subsequently, to deny the benefit of exemption. Further, the value of services in the Order-In-Original has been taken in excess of the Show Cause Notice which is not valid. He submitted that extended period is not invocable in absence of essential ingredients in this regard. He further submitted that the Adjudicating Authority has not granted option of reduced 25% penalty payable under Section 78 if payments are made within 30 days. Further, as the demand was raised on the basis of books of accounts only 50% penalty was to be imposed instead of 100% under Section 78. He requested to set aside the Order-In-Original in view of above, referring to page 226 of the appeal where the departmental letter dated 13.03.2014 addressed to the main contractor of the appellant mentions the date of contract as 26.02.2014.

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 submissions made by the Appellant.

9. It is the contention of the Appellant that services provided to main contractor M/s. Sorath Builders were under tender acceptance on 26.02.2014



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and thus the same is exempted by virtue of Sr. No. 12(a) of the Notification No. 25/2012-Service Tax dated 20.06.2012 and thus their case falls under Sr. No. 26(h) of the Notification No. 25/2012-Service Tax dated 20.06.2012 as they provided sub-contracting services by way of works contract to another contractor providing works contract services which are exempt.

10. The Adjudicating Authority at para No. 3.7 to 3.8.4 has recorded that the exemption was withdrawn with effect from 01.04.2015 and in the case on hand the Appellant provided service as per work order dated 21.08.2015 and thus they are not eligible for exemption under Notification No. 25/2012. He also observed that tender date cannot be said the date of contract and thus, acceptance order dated 10.08.2015, the date on which the work order issued by the Government Authority, i.e. 21.08.2015, is the date of contract with reference to condition i.e. "under a contract which had been entered into prior to the 1st March, 2015" given in the Section 102 of the Act and Sr. No. 12A of the Notification No. 25/2012-Service Tax as amended.

11. I find that it is on record that the tender for construction of taluka seva sadan at Jesar, Dist. Bhavnagar was published by the Gujarat Road & Building Department under public notice No. 27/2013-14 through www.statetenders.com and the last date of online submission of tender was 09.01.2014. The Road & Building Department, Government of Gujarat vide their letter No.57/2013/3457/N dated 26.02.2014 has issued a letter to the Superintending Engineer, Road and Building Circle-2, Rajkot wherein it has been mentioned that the said tender of M/s. Sorath Builders, Ahmedabad has been accepted subject to fulfilment of conditions mentioned therein. Thus, the main contractor M/s. Sorath Builders, Ahmedabad was allotted the work relating to construction of taluka seva sadan at Jesar, Dist. Bhavnagar in terms of above letter dated 26.02.2014. The same was informed to M/s. Sorath Builders, Ahmedabad vide letter dated 13.03.2014 issued by the Executive Engineer, Road & Building Department, Bhavnagar. However, the work order for the said tender was issued on 10.08.2015 to M/s. Sorath Builders, Ahmedabad. For appreciation of the issue involved, the word used in the Notification No. 25/2012-Service Tax dated 20.06.2012, which need to be examined are as under:

"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;

under a contract which had been entered into prior to the 1st March, 2015"

On plain reading of the wording used in the above mentioned Notification,



it is quite clear that there is mention of "a contract which had been entered into prior to the 1st March, 2015". As per the Indian Contract Act, contract means an agreement which is enforceable in a court of law. When a party makes an offer to another party and the other party agrees to it, it becomes an agreement which can be oral or in writing. In the present case the signed tender submitted by M/s. Sorath Builders when accepted and signed by the Executive Engineer on page 20 of Form B2 ('Item Tender and Contract for Works') become a contract. It is seen that although the Executive Engineer has signed on page 20 of Form B-2 below the seal "The tender is hereby accepted....", he has not put a date there. However, since the letter dated 26.02.2014 by the Deputy Secretary, Road & Building department to the Superintending Engineer, Road & Building Circle-2, Rajkot clearly states that the tender of Sorath Builders Ahmedabad has been accepted, it implies that the tender had become contract, the moment it was accepted by the state authorities. Thus, the date of contract cannot be later than 26.02.2014. Thus, the contract for the said work of construction of Taluka Seva Sadan at Jesar Dist. Bhavnagar was entered into by the main contractor M/s. Sorath Builders, Ahmedabad with Gujarat Road & Building Department prior to the 1st March, 2015.

11.2 In the said Notification, there is no mention of work order or commencement of work prior to 01.03.2015 and thus, I am of considered view that the main contractor M/s Sorath Builders is eligible for benefit of Sr. No. 12(a) of Notification No. 25/2012-Service Tax dated 20.06.2012 and the findings recorded by the Adjudicating Authority are misplaced. Since the works contract carried out by the main contractor M/s. Sorath Builders is exempted, the service provided by the Appellant is also exempted by virtue of Sr. No. 29(h) of Notification No. 25/2012-Service Tax dated 20.06.2012 which reads as under:

"29. Services by the following persons in respective capacities -

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

Thus, the Appellant is not liable to pay Service Tax on the income earned from main contractor M/s. Sorath Builders, Ahmedabad.

12. It is on record that the demand was proposed in the Show Cause Notice on total value of Rs. 8,14,29,029/- for the year 2015-16 & 2016-17 (Rs. 4,42,81,762/- + Rs. 3,71,47,267/-) based on Form 26AS. However, the Adjudicating Authority, after analyzing the documents submitted by the Appellant confirmed the demand on taxable value of Rs. 9,21,01,067/-, (Rs. 4,42,81,762/- + Rs. 4,78,19,305/-) after allowing abatement of 60% under Notification No. 24/2012-Service Tax. During the year 2015-16, the total taxable value of Rs. 4,42,81,762/- was received from M/s. Sorath Builders which is not



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liable to Service Tax as discussed in above paras. Further, during the year 2016-17, the Service Tax on total taxable value of Rs. 3,71,47,267/- was demanded in the Show Cause Notice. However, as per books of account produced by the Appellant, an amount of Rs. 3,44,99,681/- was received from M/s. Sorath Builders which is not liable to Service Tax as discussed in above paras. Thus, the remaining amount of Rs. 26,47,586/- (Rs. 3,71,47,267/- minus Rs. 3,44,99,681/-) received from M/s. Khushi Construction was liable to Service Tax. However, in the impugned order, the Adjudicating Authority has confirmed the Service Tax on taxable value of Rs. 1,33,19,624/- received from M/s. Khushi Construction, after allowing abatement of 60% which is not correct since the amount in excess of Rs. 26,47,586/- was not the part of Show Cause Notice. It is a settled law that no one can travel beyond the scope of Show Cause Notice. Therefore, only service tax of Rs. 1,58,855/- on the 40% of Rs. 26,47,586/- can be demanded on the works contract service provided for Construction of Sub-Registrar and Survey Bhavan and Observation Home Bhavan. Therefore, only the demand of Rs. 1,58,855/- is liable to be confirmed out of the demand of Rs. 3,80,337/- and Rs. 4,18,841/- on the services provided by the Appellant to main contractor M/s. Khushi Construction. Thus, the excess demand of Rs. 6,40,323/- [Rs. 3,80,337/- + Rs. 4,18,841/- (-) Rs. 1,58,855/-] cannot be sustained being beyond the value considered for demanding the Service Tax in the Show Cause Notice. Therefore, I confirm the demand of Rs. 1,58,855/- with applicable interest and set aside the remaining demand in the impugned order. I also confirm penalty of Rs. 1,58,855/- under Section 78 of the Act. However, I extend the benefit of reduced penalty under proviso to Section 78 of the Act subject to fulfilment of conditions mentioned therein.

13. With regards to penalty under Section 77(1)(a), in the Show Cause Notice, no penalty was proposed under this Section, whereas the penalty of Rs. 10,000/- is imposed by the Adjudicating Authority in the impugned order. Since there is no proposal in the Show Cause Notice to impose the penalty under Section 77(1)(a) of the Act, the same cannot be imposed while passing the order and hence I am of considered view that the penalty under Section 77(1)(a) cannot sustain and I set aside the same.

14. With regards to penalty under Section 77(1)(c), it is their contention that they have provided the details in response to Show Cause Notice dated 22.04.2021. They have not produced the details in response to letter dated 16.04.2021 and thus, I find that they are liable to penalty under Section 77(1)(c). I also uphold the penalty under Section 77(2) of the Act for failure to self assess and correctly file S.T.-3 returns. However, in the facts and

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circumstances I reduce the penalty from Rs. 10,000/- to Rs. 2,000/- under each of Section 77(1)(c) and 77(2) of the Act.

15. In view of discussions and findings as above, the impugned order stands modified to the extent mentioned in the Para 12, 13 & 14 above.

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

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

सत्यापित / Attested

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

आर. अ. बोरीचा/R. S. BORICHA आयुक्त (अपील)/Commissioner (Appeals)
अधीक्षक / Superintendent

के. व. एवं सेवा कर, राजकोट
By R.P.A.D. CCOT Appeals, Rajkot

To, M/s. Pushpak Construction, 205-206, Ratnadeep Complex, Opp.: Central Salt, Waghawadi Road, Bhavnagar-364 001.	सेवा में, मे. पुष्पक कंस्ट्रक्शन, 205-206, रत्नदीप कॉम्प्लेक्स, सेंट्रल साल्ट के सामने, वाघावाडी रोड, भावनगर-364001।
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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 मण्डल, भावनगर-1 को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फ़ाइल।

