



::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 / 2nd Floor, GST Bhavan
रेस कोर्स रिंग रोड / Race Course Ring Road
राजकोट / Rajkot - 360 001

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रजिस्टर्ड डाक ए.डी. द्वारा

DIN-20230264SX0000227735

क	अपील / फाइलसंख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/Date
	GAPPL/COM/1685/2022	124:/SERVICE TAX/DEMAND/2022-23	17-04-2022

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

BHV-EXCUS-000-APP-068-2023

आदेश का दिनांक / Date of Order:	23.02.2023	जारी करने की तारीख / Date of issue:	24.02.2023
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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. Shri Akbarbhai Alibhai Thasaria, Uparkot Manharkhano Delo,, Kalanal, Bhavnagar

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

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रांते 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, आर० के० पुरम, नई दिल्ली, को 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 जानी चाहिए /

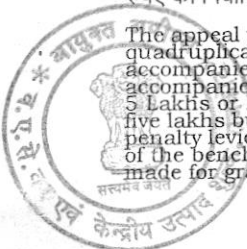
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali
Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(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 नियमवाली, 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 of 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/-



:: अपील आदेश / ORDER-IN-APPEAL ::

M/s. Akbarbhai Alibhai Thasaria, Bhavnagar (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. 124/SERVICE TAX/DEMAND/2022-23 dated 17.04.2022 (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 2014-15 & 2015-16 of the Appellant. Letter dated 15.07.2020 was issued, physically as well as through email, by the Jurisdictional Range Superintendent requesting the Appellant to provide information/documents viz. copies of I.T. Returns, Form 26AS, Balance Sheet (including P&L Account), VAT/ Sales Tax Returns, Annual Bank Statement, Contracts/ Agreements entered with the persons to whom services provided etc. for the Financial year 2014-15 to 2017-18 (upto June-2017). However, no reply was received from the Appellant.

3. In absence of data/information, a Show Cause Notice dated 10.09.2020 was issued to the Appellant, demanding Service Tax and cess to the tune of Rs. 17,11,009/- under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act') alongwith interest under Section 75 of the Act. It was also proposed to impose penalties under Section 77(1)(a), 78, 77(2) and 77(1)(c) of the Act upon the Appellant.

4. The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order who confirmed Service Tax demand of Rs. 17,11,009/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs. 17,11,009/- under Section 78 of the Act, imposed penalty of Rs. 5,000/- each under Section 77(1)(a), 77(2) and 77(1)(c) of the Act.

5. Being aggrieved, the Appellant has preferred the present appeal on various grounds that the Adjudicating Authority has erred in not considering the submission and passed the impugned order since the Service provided by him is exempted. The Adjudicating Authority erred in charge of interest and imposition of various penalties.

6. The matter was posted for hearing on 23.12.2022. Shri Kaushik Jagad, CA appeared for personal hearing and reiterated the submissions in the appeal. He submitted that the appellant is a government approved contractor and the works done for government are exempt from Service Tax. He requested to set aside the Order-In-Original.

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

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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. It is the contention of the Appellant that they have submitted reply to Show Cause Notice vide their letter dated 29.03.2022 which was duly acknowledged by the office of the Adjudicating Authority. But the same was not considered by the Adjudicating Authority while passing the impugned order.

9. It is the contention of the Appellant that their services are covered under Notification No.25/2012-Service Tax dated 20.06.2012 under Clause 12 and Clause 29(h).

10. On verification of Annual Report and copies of work orders for the Year 2014-15 submitted by the Appellant it is found that they had carried out the work relating to (i) construction of vented causeway of Ghelo River at Village: Lakhanka awarded by Executive Engineer, Panchayat Road & Building Division, Bhavnagar (ii) construction of boys and girls hotel at Bhavnagar awarded by Executive Engineer (R&B) Division, Bhavnagar (iii) repairs to Mangalory Tiles Roof of Mamladar Officer at Vallabhipur, Dist.: Bhavnagar awarded by Deputy Executive Engineer, R&B Sub Division, Botad (iv) repairs to Mangalory Tiles Roof of Mamladar & ATVT Building at Umrata, Dist.: Bhavnagar awarded by Deputy Executive Engineer, R&B Sub Division, Botad (v) repairs to Mangalory Tiles Roof of Court Building at Umrata, Dist.: Bhavnagar awarded by Deputy Executive Engineer, R&B Sub Division, Botad (vi) construction to various road under R&B Sub Division, Botad awarded by Deputy Executive Engineer, R&B Sub Division, Botad. Thus, all this work carried out by the Appellant is for construction/ repair of government road/ buildings, irrigation work etc. which are covered under Clause 12 of the Notification No. 25/2012-Service Tax dated 20.06.2012. The same is re-produced below for reference:

"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);

(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;



(Handwritten signature)

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

(f);"

The exemption enumerated at (a), (c) and (f) was withdrawn w.e.f. 01.04.2015 vide Notification No. 6/2015-Service Tax dated 01.03.2015. However, the work carried out by the Appellant during 2014-15 is exempted by way of clause 12 of Notification No. 25/2012-Service Tax dated 20.06.2012 and thus, I hold that they are not liable to pay Service Tax for the work carried out during 2014-15.

11. On verification of Annual Report and copies of work orders for the year 2015-16, it is found that they have provided service of sub-contractor by way of works contract to another contractor M/s. Om Construction Co. who is providing works contract services of special repairs of roads of Bhavnagar District package No. BVN/SR/2013-14/10 which are exempt by Clause 29(h) of Notification No. 25/2012-Service Tax dated 20.06.2012. Likewise they have provided service of sub-contractor by way of works contract to another contractor M/s. Shiv Build India Pvt. Ltd. which is exempt by clause 29(h) of Notification No. 25/2012-Service Tax dated 20.06.2012.

12. Further, they have also provided services relating to construction of road at Kala Talav, providing of supply and fixing junction board and village name board on various roads of R&B Panchayat Division, Patan, providing of supply and fixing junction board and village name board on various roads of R&B Panchayat Division, Porbandar, providing of supply and fixing junction board and village name board on various roads of all talukas under Jamnagar R&B Panchayat Division, Jamnagar, providing of supply and fixing junction board and village name board on various roads of R&B Panchayat Division, Rajula Jafrabad, providing of supply and fixing junction board and village name board on various roads at Vyara, Valod, Songadh, Uchhal, Nizar Taluka in Tapi District, construction of road to Garajiya approach road, construction of road to Palitana-Pingali road, construction of road to Piparla-Nonghanvadar road, construction of road to Palitana-Talaja road, construction of road to Songadh-Palitana road, construction of road to helipad at Palitana, construction of road to Palitana-Jesar road, providing and supply of junction board and village name board at various road of Bhavnagar, Ghogha, Sihor, Gadhada, Vallabhipur and Umralla Taluka of Bhavnagar District, construction of road to under Dist. (R&B) Sub Division, Bhavnagar by providing road side clearing and white washing to all road furniture (stone), tress & bridge/ CD work parapets etc. All these works are relating construction, repair and maintenance of roads which are exempted by way of clause 13(a) of the Notification No. 25/2012-Service Tax dated 20.06.2012 as under:

Signature



"13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;

(b)

(ba)....

(bb)....

(c)....

(d)....


(e)...."

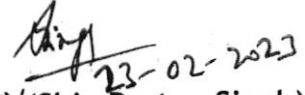
13. In view of discussions and finding, I set aside the impugned order and allow the appeal filed by the Appellant.

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

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

सत्यापित / Attested



 23-02-2023

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

आर. एस. बोरीचा / R. S. BORICHA
अधीक्षक / Superintendent

आयुक्त (अपील)/Commissioner (Appeals)

के. व. एवं सेवा कर अपील, राजकोट

By R.P.A.D. CGST Appeals, Rajkot

To, M/s. Akbarbhai Alibhai Thasaria, Uparkot Manharkhano Delo, Kalanala, Bhavnagar.	सेवा में, मे. अकबरभाई अलीभाई ठासरिया, उपरकोट मनहरखानों डेलो, कालानाला, 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 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 फाइल।

