



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



द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan  
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रजिस्टर्ड डाक ए.डी. द्वारा

DIN-20230264SX000000AA2F

क्र	अपील / फाइलसंख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/Date
	GAPPL/COM/3171/2022	470/SERVICE TAX/DEMAND/2021-22	11-08-2022

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

**BHV-EXCUS-000-APP-069-2023**

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 Tulsibhai Muljibhai Patel, Shanti Shilp-2, Ashok Dave Marg, Near HDFC Bank, Waghawadi Road, Bhavnagar-364002

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) सौमा 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 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 (सिस्टम)की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 360016 को की जानी चाहिए। /

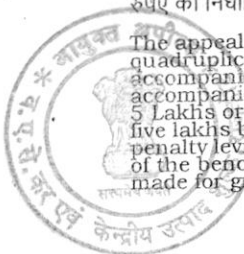
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(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 मांग, ब्याज की मांग 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 मांग, ब्याज की मांग 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/-



- (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 Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (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 जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

- धारा 11 डी के अंतर्गत रकम
- सेनवेट जमा की ली गई गलत राशि
- सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं० 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा।।

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,

Under Central Excise and Service Tax, "Duty Demanded" shall include :

- 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 को पुनरीक्षण आवेदन :**

**Revision application to Government of India:**

इस आदेश को पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, 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 छुट (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 क्रेडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं० 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 संग्रहण 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।  
जहां संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।। In case, if the order covers various umbers 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 संबंधित मामलों को सम्मिलित करने वाले नियमों को 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](http://www.cbec.gov.in) को देख सकते हैं।।  
For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in).



**:: अपील आदेश / ORDER-IN-APPEAL ::**

M/s. ~~Tulsibhai Mutjibhai Patel, Bhavnagar~~ (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. 470/SERVICE TAX/DEMAND/2021-22 dated 11.08.2022 (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 of the Appellant. A letter dated 10.02.2021 was issued by the Jurisdictional Range Superintendent requesting the Appellant to provide information/documents for the Financial year 2014-15, 2015-16, 2016-17 & 2017-18 (upto June-2017). The said letter was also sent through email to the Appellant, however, no reply was received from the Appellant.

3. In absence of data/information, a show cause notice dated 23.03.2021 was issued to the Appellant demanding Service Tax and cess to the tune of Rs. 1,66,041/- 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 adjudicating authority vide the impugned order confirmed Service Tax demand of Rs. 1,66,041/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs. 1,66,041/- under Section 78 of the Act and also 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 grounds that he is an individual and partner in firms. As regard to the amount of Rs. 11,45,113/-, he submitted that he received salary of Rs. 7,48,663/- and remuneration as pater from Leela Shanti Construction and Surbhi Infrastructure in which he is a partner. The remuneration as well as salary both are outside the purview of Service Tax and exempted.

6. The matter was posted for hearing on 27.01.2023. CA Shri K. P. Jagad appeared for personal hearing and submitted that the appellant did not receive any letter, Show Cause Notice or personal hearing notice from the department. Even the Order-In-Original was not received by them. The Order-In-Original dated 11.08.2022 was collected by them personally on 23.11.2022, after receipt of phone call from the department. The ex-parte order has been passed assuming the TDS on salary as TDS on income from provision of services. He has enclosed a copy of Form 26AS, ITR with computation and other details with the



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appeal. 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. To ascertain the exact date of receipt of impugned order by the Appellant, a letter dated 10.02.2023 was issued to the jurisdictional Assistant Commissioner who vide his letter dated 14.02.2023 informed that the impugned order was sent by Registered Post AD to the Appellant but the same was returned as undelivered by Postal Department on 28.09.2022. Therefore, the jurisdictional range officer was directed to serve the same to the Appellant and hence the said impugned order was delivered to the Appellant by hand on 21.11.2022 He also forwarded signed copy of impugned order by the Appellant. 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.

8. I find that the main issue to be decided in the instant case is whether the Appellant is liable to Service Tax on the income received by him or otherwise. On going through the impugned order, it has been held by the Adjudicating Authority that the service provided by the Appellant is a taxable service in absence of information/ documents which were neither submitted by the Appellant nor they had filed any defense submission and had not appeared for personal hearing also. The Appellant on the other hand has stated he is an individual and partner in firm. It is also his contention that he earned income by way of salary and remuneration from the companies in which he is a partner, which is not taxable and out of purview of Service Tax.

9. In the case on hand, on verification of copy of Income Tax Return for the year 2015-16, it is found that at column Part B-TI (1), there is mention of salaries amount of Rs. 7,46,263/-. In Form 26AS, the Appellant received income from M/s. Surabhi Customer Care Pvt. Ltd. under Section 192 of the Income Tax Act which is for salary. In Schedule IF of the Income Tax Return, it has been mentioned that the Appellant is partner in (i) Shanti Construction (ii) Leela Shanti Construction (iii) Shanti Associates (iv) Surabhi Infrastructure and (v) Shanti Corporation and received profit. There is mention of remuneration of Rs. 3,47,472/- and Rs. 48,978/- received from Leela Shanti Construction and Surabhi Infrastructure, respectively.

10. Now, as per the contention of the Appellant, it is to be decided whether activity carried out by them is taxable or otherwise. In negative list regime all services, other than services specified in the negative list, provided or agreed to be provided in the taxable territory by a person to another would be taxed under



*[Handwritten signature]*

Section 66B. 'Service' has been defined in clause (44) of the new Section 65B and means-

**"(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—**

**(a) an activity which constitutes merely,—**

**(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or**

**(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or**

**(iii) a transaction in money or actionable claim;**

**(b) a provision of service by an employee to the employer in the course of or in relation to his employment;**

**(c) fees taken in any Court or tribunal established under any law for the time being in force.**

**Explanation 1 . — For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,—**

**(A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or**

**(B) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or**

**(C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.**

**'Explanation 2. - For the purposes of this clause, the expression "transaction in money or actionable claim" shall not include—**

**(i) any activity relating to use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;**

**(ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out—**

**(a) by a lottery distributor or selling agent on behalf of the State Government, in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner, in accordance with the provisions of the Lotteries (Regulation) Act, 1998;. (Finance Act 2016)**

**(b) by a foreman of chit fund for conducting or organising a chit in any manner.;**

**Explanation 3. — For the purposes of this Chapter,—**

**(a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;**

**(b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.**

**Explanation 4. — A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;"**

On plain reading of the above definition, service means any activity for consideration carried out by a person for another and includes a declared service. The said definition further provides that service does not include any activity that constitutes only a transfer in title of (i) goods or (ii) immovable property by way of sale, gift or in any other manner, a transaction in (i) money



*[Handwritten Signature]*

or (ii) actionable claim, any service provided by an employee to an employer in the course of the employment, fees payable to a court or a tribunal set up under a law for the time being in force, a transfer, delivery or supply of goods which is a deemed sale under article (29A) of the constitution, duties performed by MP/ MLA/ Member of Municipal Corporation, Panchayats or local authorities or person holding constitutional posts.

11. For employee's service, the exclusion from the scope of service in case of employment is qualified by the words 'in the course of employment'. It implied activities or services in regular or ordinary course of employment i.e. during normal or ordinary employment wherein employees work under the guidance, direction and superintendence of his or her employer so as to achieve the objectives of employer. There shall be no Service Tax liability on services of employees for the services provided to employer.

12. For ascertaining whether an employer-employee relationship exists, the person working for a company and receiving remuneration for such work or services ought to show that (a) there was relationship of master and servant or employer and employee between the company and himself (b) such relationship involved the element supervision and control by the employer, that it that company (c) the duties or functions discharged by such a person show that he was working as a salaried person and was doing regular work allotted to him by the company (d) the remuneration received by him was in the form of salary.

13. Considering the submission and documentary evidences, I am of considered view that the income received by the Appellant as Salary and remuneration is not liable to Service Tax since there exists no service between the Appellant and the company.

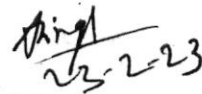
14. In view of discussions and findings, I set aside the impugned order and allow the appeal filed by the Appellant.

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

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

सत्यापित / Attested





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

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

आयुक्त (अपील) / Commissioner (Appeals)

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

To, M/s. Tulsibhai Muljibhai Patel, Shanti Shilp-2, Ashok Dave Marg, near HDFC Bank, Waghawadi Road, Bhavnagar-364002	सेवा में, मे. तुलसीभाई मुलजीभाई पटेल, शांति शिल्प- 2, अशोक दवे मार्ग, HDFC बैंक के पास, वाघावाडी रोड, भावनगर-364002।
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- 1) मुख्य आर्यवत, वर्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आर्यवत, वर्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनार आर्यवतलय, भावनार को आवश्यक कायवाही हेतु।
- 3) अपर आर्यवत, वर्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनार को आवश्यक कायवाही हेतु।
- 4) सहायक आर्यवत, वर्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनार-1 मण्डल को आवश्यक कायवाही हेतु।
- 5) वाई फाइल।

प्रतिलिपि:-

