



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
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रजिस्टर्ड डाक ए.डी. द्वारा

DIN-20230264SX000000ECED

क	अपील / फाइलसंख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/Date
	GAPPL/COM/2026/2022	BHV-EXCUS-000-JC-LD- 032-2022-23	16-06-2022

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

BHV-EXCUS-000-APP-070-2023

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. Gulabsinh Lakhubha Sarvaiya(Pruthvi Corporation), A/5, Industrial Plaza,,Near Market Yard,
Chitra,Bhavnagar-364004, Mobile no. 9427751520

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, आर० के० 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 असारवा अहमदाबाद- 380016को की जानी चाहिए। /

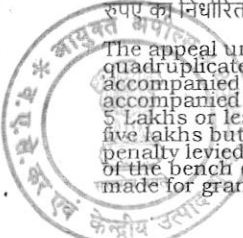
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali
Bhawan, Asarwa Ahmedabad-380016in case of appeals other than as mentioned in para- 1(a) above

(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, रूपए 5 लाख या उससे कम, 5 लाख रूपए या 50 लाख रूपए तक अथवा 50 लाख रूपए से अधिक है तो क्रमशः 1,000/- रूपये,
5,000/- रूपये अथवा 10,000/- रूपये 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/- रूपए 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, रूपए
5 लाख या उससे कम, 5 लाख रूपए या 50 लाख रूपए तक अथवा 50 लाख रूपए से अधिक है तो क्रमशः 1,000/- रूपये, 5,000/- रूपये अथवा
10,000/- रूपये 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/-
रूपए 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. Gulabsinh Lakhubha Sarvaiya, Bhavnagar (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. BHV-EXCUS-000-JC-LD-032-2022-23 dated 16.06.2022 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST, HQ, 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 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 22.04.2021 was issued to the Appellant, demanding Service Tax and cess to the tune of Rs. 1,61,81,271/- 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. 4,73,610/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs. 4,73,610/- 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. 1,57,07,661/-.

5. Being aggrieved, the Appellant has preferred the present appeal on various grounds that the out of demand on taxable value of Rs. 31,65,555/-, the value of Rs. 15,00,965/- was pertaining to Damar Road which is exempted as per mega exemption Notification No. 25/2012-Service Tax dated 20.06.2012. With regard to payment of Rs. 4,36,606/- from Shubham Associates and Rs. 7,36,606/- from Mehulbhai Maheshbhai Pandya, they submitted that both are same since Shri Mehulbhai Maheshbhai Pandya is the proprietor of Shubham Associates for whom they have carried out road work under sub-contract base which is exempted. In the books of account an amount of Rs. 4,36,606/- was considered twice and thus same is to be deducted from the total amount. For remaining taxable value of Rs. 12,27,984/-, they have claimed the benefit of threshold



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limit of Rs. 10 Lakh as per Notification No. 33/2012-Service Tax and for remaining amount of Rs. 2,27,984/- they have claimed benefit of Notification No. 26/2012-Service Tax dated 20.06.2012 amended vide Notification No. 8/2016 dated 01.03.2016, accordingly to which 70% is available as abatement.

6. The matter was posted for hearing on 02.02.2023. CA Shri K. P. Jagad appeared for personal hearing and submitted that services in respect of Damar Road work valued at Rs. 15,00,965/- are exempt. Further, income of Rs. 7,36,606/- received from M/s. Shubham Associates for road work is also exempt. However, proprietor of Shubham Associates Shri Mehulbhai Pandya in his TDS return had inadvertently shown the amount of Rs. 4,36,606/-. Thus, both amounts are taken by Adjudicating Authority as two different payments for same work as detailed in Para 3.2 and 3.3 of the Order-In-Original. He undertook to submit a copy of Form 26AS and Profit & Loss account within a week. Thus, after deducting exempted income, the taxable value is below the threshold limit. Therefore, he requested to set aside the Order-In-Original.

6.1 The Appellant vide his letter dated 07.02.2023 submitted copy of audit report, Form 26AS for the year 2014-15, 2015-16 and 2016-17 as assured during the course of personal hearing.

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 considering the submissions of the Appellant and dropped the demand of Rs. 1,57,07,661/- out of total demand of Rs. 1,61,81,271/-. The Appellant is a proprietorship firm in the name and style of M/s. Purthvi Corporation, Bhavnagar.

9. The Adjudicating Authority at para 3.20.1 to 3.21, after analyzing the Acceptance Order No. Tender/197 dated 07.07.2015 issued by the Deputy Executive Engineer, Palitana (R&B) Sub-division, Palitana issued to M/s. Pruthvi Corporation, Bhavnagar for the work of "S.R. to Judge Quarter at Gariyadhar (Replacing of flooring work, Door/ Windows and other Misc. Work)" for Rs. 1,66,110/-, Work Order No. WB/DEE/B-1/01/2016-17 dated 09.01.2016 issued by the Deputy Executive Engineer, Palitana (R&B) Sub-division, Palitana issued to M/s. Pruthvi Corporation, Bhavnagar for the work of "S.R. to Quarter at



Shri K. P. Jagad

Gariyadhar (Replacing of water supply, drainage, electric wiring, slab wall repairing, toilet repairing and other misc. work)" for Rs. 78,505/- and contingent bill No. 2202 dated 02.03.2017 prepared by the Palitana Nagarpalika for payment of Rs. 2,46,763/- to M/s. Purthvi Corporation, Bhavnagar for the work of "Construction of Snanagruh", found that the services provided by the Appellant was exempted upto 31.03.2015 as per Entry No. 12(a) of the Notification No. 25/2012-Service Tax dated 20.06.2012 as amended, however, the said exemption was withdrawn with effect from 01.04.2015 vide Notification No. 6/2015-Service Tax dated 01.03.2015 with effect from 01.04.2015. He also found that the aforesaid exemption provided under Entry 12(a) prior to 01.04.2015 has been restored w.e.f. 01.03.2016 under new entry 12A(a) and by virtue of Section 102 of the Act for the period from 01.04.2015 to 29.02.2016 subject to the following conditions:

- (i) Services should be provided under a contract
- (ii) Such contract should have been entered prior to 01.03.2015 on which appropriate stamp duty, wherever applicable had been paid prior to 01.03.2015
- (iii) The exemption comes with a sunset clause that this exemption shall not apply on or after 01.04.2020.

The Adjudicating Authority found that the Appellant provided the services as per work order issued after 01.03.2015 and thus the Appellant is not eligible to claim exemption and hence they are required to pay Service Tax on work income of Rs. 1,66,110/-, Rs. 78,505/- received from Palitana (R&B) Sub-division, Palitana and Rs. 2,46,763/- received from Palitana Nagarpalika.

9.1 The Adjudicating Authority also found that the Appellant had not produced any documents for income of Rs. 15,00,965/- received from Jasdan Nagarpalika, Rs. 4,36,606/- received from M/s. Shubham Associate and Rs. 7,36,606/- received from Mehulbhai Maheshbhai Pandya and thus hold that they are liable to pay Service Tax on this amount in absence of any documentary evidences. The details of denial of exemption are as under:

Description	Value of Taxable Service (Rs.)	Rate of Service Tax	Service Tax payable (Rs.)
Acceptance Order No. Tender/197 dated 07.07.2015 issued by the Deputy Executive Engineer, Palitana (R&B) Sub-division, Palitana	1,66,110	14.50%	24086
Work Order No. WB/DEE/B-1/01/2016-17 dated 09.01.2016 issued by the Deputy Executive	78,505	14.50%	11383



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Engineer, Palitana (R&B) Sub-division, Palitana			
Contingent bill No. 2202 dated 02.03.2017 prepared by the Palitana Nagarpalika	2,46,763	15.00%	37014
Jasdan Nagarpalika	15,00,965	15.00%	225145
Shubham Associate	4,36,606	15.00%	65491
Mehulbhai Maheshbhai Pandya	7,36,606	15.00%	110491
Total	31,65,555		473610

10. With regard to income of Rs. 15,00,965/- from Jasdan Nagarpalika, the Appellant produced copy of a letter addressed to Chief Officer, Jasdan Nagarpalika wherein it has been mentioned that a work order dated 29.12.2016 awarded to M/s. Pruthvi Corporation for construction of Damar Road in 14 areas of Jasdan Nagarpalika under SJMMSVY. The Appellant further produced a copy of bill No. 1069 dated 27.03.2017 amounting to Rs. 15,00,965/- for the bill submitted by M/s. Purthvi Corporation, Bhavnagar under SJMMSVY yojana for construction of road in various areas of Jasdan Nagarpalika. Thus, it is evident that the Appellant has carried out work relating to construction of Road under various areas of Jasdan Nagarpalika which is falling Sr. No. 13(a) of the Notification No. 25/2012-Service Tax dated 20.06.2012 as under:

"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;"

Thus, the Appellant is not liable for Service Tax on this work income received from Jasdan Nagarpalika.

11. With regards to income of Rs. 7,36,606/- received from Mehulbhai Maheshbhai Pandya, the Appellant has submitted copy of contract dated 03.09.2015 entered into by them with M/s. Shubham Associates owned by Mehulbhai Maheshbhai Pandya wherein the Appellant has carried out work of construction of bridge in place of old bridge on Kansara river allotted by Bhavnagar Municipal Corporation under SJMMSVY scheme. The Appellant also produced the copy of said work order No. 314 dated 21.08.2015 allotted by the Bhavnagar Municipal Corporation to the main contractor. This work carried out by the Appellant falls under Sr. No. 29(h) of the Notification No. 25/2012-Service Tax dated 20.06.2012 which is as under:

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

(a)....

(b)....



Air

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

Since the work allotted to another contractor was exempt vide Sr. No. 13(a) of the Notification No. 25/2012-Service Tax dated 20.06.2012, the services provided by the Appellant is also exempted vide Sr. No. 29(h) of the Notification No. 25/2012-Service Tax dated 20.06.2012 and thus, the Appellant is not liable for Service Tax on this work income received from Mehulbhai Maheshbhai Pandya.

12. It is on record that the demand of Service Tax in the Show Cause Notice has been made based on the income reflected in Form 26AS of the Appellant. Further, the income reflected in Profit & Loss Account is higher than the income reflected in Form 26AS and thus demanding Service Tax on income reflected in Profit & Loss account which is not the part of income of Form-26AS is nothing but an act to travel beyond the scope of Show Cause Notice. Further, as contested by the Appellant that the income of Rs. 4,36,606/- is from M/s. Shubham Associates which is owned by Mehulbhai Maheshbhai Pandya and thus income is reflected twice. In Form 26AS this amount is reflected whereas in their books of accounts they have taken income of Rs. 7,36,606/- which is towards exempted services. Thus, I find that the Appellant is not liable to pay Service Tax on income of Rs. 4,36,606/- since the same is already covered in the income of Rs. 7,36,606/-. With regard to income from contingent bill Contingent bill No. 2202 dated 02.03.2017 prepared by the Palitana Nagarpalika for Rs. 2,46,763/-, it is found that the same is from sale of blocks to Palitana Nagarpalika and thus this is not a service. Hence, I find that the Appellant is not liable for Service Tax on this income.

13. In the impugned order, after thorough verification of income earned by the Appellant, the Adjudicating Authority demanded and confirmed the Service Tax on the following amount which is not the part of Form 26AS but the same is part of Profit & Loss Account of the Appellant.

Description	Value of Taxable Service (Rs.)	Rate of Service Tax	Service Tax payable (Rs.)
Acceptance Order No. Tender/197 dated 07.07.2015 issued by the Deputy Executive Engineer, Palitana (R&B) Sub-division, Palitana	166110	14.50%	24086
Work Order No. WB/DEE/B-1/01/2016-17 dated 09.01.2016 issued by the Deputy Executive Engineer, Palitana (R&B) Sub-division, Palitana	78505	14.50%	11383
Total	244615		35469



Therefore, I am of considered view that the Appellant is not liable to pay Service Tax on the above mentioned income.

14. In view of the above, 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

[Signature]

[Signature]

आर. एस. बोरीचा / R. S. BORICHA

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

अधीक्षक / Superintendent

आयुक्त (अपील) / Commissioner (Appeals)

के. व. एवं सेवा कर अपील, राजकोट

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

To, M/s. Gulabsinh Lakhubha Sarvaiya, Prop. Of Pruthvi Corporation, A/5, Industrial Plaza, Near: Market Yard, Chitra, Bhavnagar-364004	सेवा में, मे. गुलाबसिंह लखुभा सरवैया, मालिक: पृथ्वी कॉर्पोरेशन, A/5, इन्डस्ट्रीअल प्लाज़ा, मार्केट यार्ड के पास, भावनगर- ३६४००४।
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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, भावनगर मण्डल-१ को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फाइल।

