



::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

रेस कोर्स रिंग रोड / Race Course Ring Road

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा

DIN-20230364SX0000000C66

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/Date
	GAPPL/COM/STP/1756/2022	BHV-EXCUS-000-ADC-VM-001-2022-23	4/20/2022

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

**BHV-EXCUS-000-APP-089-2023**

आदेश का दिनांक / Date of Order:	14.03.2023	जारी करने की तारीख / Date of issue:	15.03.2023
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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 वृजित: /  
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 :-

**Samatbhai Sujabhai Chauhan, Siddheshwar Park,, P 205 & 206, Anjar-370110, Gujrat**

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 असावा अहमदाबाद- 380016 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 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 जहाँ 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 उनके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसको 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 जहाँ 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 or 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 नियमवासी, 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 अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं 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 रुपये से अधिक न हो।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "भाग 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 (सं- 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान अर्जी एवं अपील को लागू नहीं होगा।
- For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
- Under Central Excise and Service Tax, "Duty Demanded" shall include :
- amount determined under Section 11 D;
  - amount of erroneous Cenvat Credit taken;
  - amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार 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 ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिन, 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:
- यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
  - भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर बरी 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.
  - यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
  - सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इच्छित 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 समाप्ति तिथि पर या बाद में पारित किए गए हैं। / Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.
  - उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) 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.
  - पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।  
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये 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.
  - 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 पढी 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 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.
  - 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.
  - 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.
  - 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. Samatbhai Sujabhai Chauhan, Anjar (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. BHV-EXCUS-000-ADC-VM-001-2022-23 dated 20.04.2022 (hereinafter referred to as 'impugned order') passed by the Additional 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.

3. In absence of data/information, a Show Cause Notice dated 21.04.2021 was issued to the Appellant, demanding Service Tax and cess to the tune of Rs. 76,76,941/- 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. 16,28,677/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs. 16,28,677/- under Section 78 of the Act, imposed penalty of Rs. 10,000/- each under Section 77(1)(a) and 77(2) of the Act. The Adjudicating Authority dropped the demand of Rs. 60,48,264/-.

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

(i) The Show Cause Notice and impugned order has been issued without investigation and only based on the data provided by income tax department as per TDS and Income Tax return is not sustainable in law as no investigation and effort to know whether the said amount is towards providing service or if there is any service then which type of service has been provided by them and whether Service Tax is payable or otherwise on such services. The CBIC has issued advisory not to issue notices without any verification and notices must not to be given due to ITR-TDS and Service Tax amounts are distinct. They placed reliance on Ravindra Pratap Thareja Vs. ITO reported as TS-657-ITAT-2015(JAB), Court on its own motion Vs. CIT (2013) 352 ITR 273, CCE Vs. Mayfair Resorts (2011) 22 STR 263 and Synergy Audio Visual Workshop P. Ltd. Vs. Commissioner of S. T. Bangalore 2008 (10) STR 578, Amrish Rameshchandra Shah Vs. UOI and Others - 2021-TIOL-583-HC-MUM-ST. They also relied upon CBIC instruction dated 26.10.2021 and Order-In-Appeal No. BHV-EXCUS-000-APP-022-2021-22 dated 31.03.2022 issued by the then Commissioner (Appeals), Rajkot. They further



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stated that Hon'ble CESTAT Kolkata in the case of M/s. Luit Developers Pvt. Ltd. Vs. Commissioner of CGST & C.Ex., Dibrugarh reported in 2022-TIOL-180-CESTAT-KOL.

(ii) The adjudicating authority has issued the order on the basis of facts and his own interpretations which were not a part of the Show Cause Notice as there was no specific charge for any particular service or any ground which has been mentioned in the impugned order. The impugned order has been issued not on the basis of any material evidence available on records or any investigation but just negating the submissions made by them. The Adjudicating Authority ignored the instructions issued by the Board and mentioned such facts and taken such grounds which was never a part of the Show Cause Notice. There is an established principle that the facts and allegations which have not been mentioned in the Show Cause Notice, should not be a part of Order-In-Original. The impugned order has travelled beyond the scope of Show Cause Notice and they rely on Huhtamaki PPL Ltd. Vs. C.Ex. & S.T., Surat-I reported in 2021(50) GSTL 309 (Tri.-Ahmd.), R. Ramadas vs. Joint Commissioner of C.Ex., Puducherry-2021 (44) GSTL 258 (Mad.), Mackintosh Burn Ltd. Vs. Commissioner of Service Tax, Kolkata-2020 (35) GSTL 409 (Tri.-Kolkata), Swapne Nagari Holiday Resort Vs. Commissioner of C.Ex. Raigad-2019 (21) GSTL 559 (Tri.-Mumbai), ST Electricals Pvt. Ltd. Vs. Commissioner of Central Excise, Pune-I-2019 (20) GSTL 273 (Tri.-Mumbai), Ajanta Manufacturing Ltd. Vs. Commissioner of Customs, Kandla-2019 (369) ELT 1067 (Tri.-Ahmd.).

(iii) The order has been issued without verifying proper documents and relevant notification since in the present case, entire services has been provided to Government/ Governmental authority only. The Adjudicating Authority has not verified the documents and the date of contract in all such cases and he had confirmed the demand of Rs. 16,28,677/- on the pretext that in such cases appellant had not provided any plausible reason supported by documentary evidences. There was no allegation in the Show Cause Notice regarding which services were provided and to whom the services were provided. All the services were provided to government/ governmental authority and as per Notification No. 25/2012-Service Tax dated 20.06.2012, the remaining works contracts are exempted from levy of Service Tax under Sr. No. 12(e), 13(e), 25(a) of the Notification No. 25/2012-Service Tax. The details are as under:

Sr. No.	Party/ Work order No.	Amount (Rs.)	Sr. No. of Notification 25/2012
1	Work Order No. GM/Engi/JMG-11C/2015/4330 dated 01.10.2015	30,00,000	25(a)
2	Work Order No. GM/Engi./JMG-1L/2015/4077 dated 14.09.2015	3,49,600	13(e)



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3	Work Order No. GM/Engi./JM-13/2016/2862 dated 12.07.2016	25,000	12A(a) & 12A(b)
4	Work Order No. GM/Engi/JMG-1H/2015/1695 dated 07.05.2015	1,98,200	13(e)
5	Gujarat Water Supply & Sewerage Board	12,53,680	12(e)
6	Halvad Nagarpalika	3,17,325	12(e)
7	Wadhwan Nagarpalika Chief Officer Surendranagar	13,25,401	13(a) & 12(e)
8	Dhrangadhra Nagarpalika	22,55,579 & 10,87,161	12(e)
9	Surendranagar Dudhrej Municipality	2,79,378	12A(a)

There was no allegation in the Show Cause Notice regarding date of contract and copy of contracts. They had submitted all the related documents. It is not forthcoming as to from where, it was confirmed by the Adjudicating Authority that in case of particular work, the contract was done before 01.03.2015 and in particular case it was done after 01.03.2015. Many services which is provided to the government is exempt as per Notification inspite of work order issued after 01.03.2015 and not fettered with the restriction clause of 'contract entered before 01.03.2015'. As per para 3.17 of the impugned order, the calculation of Service Tax liability of different order mentioned in table format in which value of taxable service mentioned, as Rs. 1,68,706/- against work order No. GM-Eng/JM-1E/2015/1689 dated 07.05.2015, whereas, as per copy of order, the actual value of contract is Rs. 1,09,763/- and accordingly, Service Tax is Rs. 15,916/- and not Rs. 24,462/-.

(iv) The charge of non disclosure of true and correct details is baseless and extended period cannot be invoked. They placed reliance in the case of Oriental Insurance Company Ltd. Vs. Commissioner, LTU, New Delhi-2021-TIOL-307-CESTAT-DEL, Blackstone Polymers Vs. Commissioner of Central Excise, Jaipur-II - 2014 (301) ELT 657 (Tri.-Del.), Kirloskar Oil Engines Ltd. Vs. Commissioner of Central Excise, Nasik- 2014 (178) ELT 998 (Tri.-Mumbai), Hindalco Industries Ltd. Vs. Commissioner of C.Ex., Allahabad-2003 (161) ELT 346 (Tri.-Del.), Circular No. 1053/02/2017-CX, F.No. 96/1/2017-CX.I dated 10.03.2017.

(vi) No penalty imposable under Section 77(1), 77(2) and 78 of the Act in the case of interpretation of law and they relied on judgment in the case of ITEL INDUSTRIES PVT. LTD. as reported at 2004 (163) ELT 219 (Tri.-Bang.), Hindustan Steel Ltd. reported in 1978 ELT (J159), Tamilnadu Housing Board Vs Collector of Central Excise, Madras as reported at 1994 (74) ELT 9 (SC), Commissioner of C.Ex., Mysore Vs. Town Hall Committee, Mysore City Corporation-2011 (24) STR 172 (Kar.), BSNL Vs. Commissioner of Service Tax, Bangalore - 2008 (9) STR 499 (Tri.-Bang.), Commissioner of C.Ex., Ludhiana Vs. Instant Credit-2010 (17) STR 397 (Tri.-Del.)



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6. The matter was posted for hearing on 03.02.2023. Shri R. C. Prasad, consultant appeared for personal hearing and submitted that entire services (works contract service) were rendered to government authority only. The Adjudicating Authority has dropped part of the demand in the Show Cause Notice based on the documents produced before him. However, due to lack of documents in respect of some other works, part of demand has been confirmed. The Appellant has been able to trace some of the missing documents which are now enclosed with the appeal. He handed over additional written submissions alongwith a summary of the same. He submitted that some of the documents are still missing. However, the taxable value remaining in respect of the same is below Rs. 10 Lakhs. Hence, he requested to drop the entire demand and to set aside the Order-In-Original.

6.1 The additional written submission is akin to grounds of appeal submitted by the Appellant. They have submitted a calculation sheet and the copy of Profit & Loss account for the year 2015-16 & 2016.17.

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. 60,48,264/- out of total demand of Rs. 76,76,941/-. The Appellant is a proprietorship firm.

9. The Adjudicating Authority at para 3.11 to 3.13, after analyzing the (i) Work Order No. GM/Engi/JMG-11C/2015/4330 dated 01.10.2015 issued by the Chief Officer, Gandhidham Nagarpalika for the work of "Repairing of Pay & Use Toilet at Gandhidham" for Rs. 30,00,000/-, (ii) Work Order No. GM/Engi./JMG-1L/2015/4077 dated 14.09.2015 issued by the Chief Officer, Gandhidham Nagarpalika for the work of "Construction of Wall at Gandhidham Matiyadev Maheshwari Crematorium" for Rs. 3,49,600/-, (iii) Work Order No. GM/Engi./JM-13/2016/2862 dated 12.07.2016 issued by the Chief Officer, Gandhidham Nagarpalika for the work of "Painting work at Bhai Pratap Circle and Statue at Gandhidham" for Rs. 25,000/-, (iv) Work Order No. GM/Engi/JMG-1H/2015/1695 dated 07.05.2015 issued by the Chief Officer, Gandhidham Nagarpalika for the work of "Construction of Protection Wall at Gandhidham Charan Samat Crematorium" for Rs. 1,98,200/-, (v) Work Order No. GM/Engi/JMG-



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11/2015/2169 dated 11.06.2015 issued by the Chief Officer, Gandhidham Nagarpalika for the work of "Construction of School Rooms at Adipur" for Rs. 5,30,868/-, (vi) Work Order No. GM/Engi/JMG-1M/2015/4078 dated 14.09.2015 for the work of "Construction of School Rooms at Sain Xaviers School at Gandhidham" for Rs. 3,03,100/- and (vii) Work Order No. GM/Engi/JM-1E/2015/1689 dated 07.05.2015 for the work of "Construction of Shed at Ahirwas Primary School, Gandhidham" for Rs. 1,68,706/-, found that the services provided by the Appellant was exempted upto 31.03.2015 as per Entry No. 12(a) & 12(c) 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. 35,72,800/- and Rs. 10,02,6745/- received from Gandhidham Municipality.

9.1 The Adjudicating Authority also found that the Appellant could not give any plausible reason supported by documentary evidences for the services provided by them and held 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:

Sr. No.	Name of the party	Amount received FY 2015-16 (Rs.)	Amount received FY 2016-17 (Rs.)
1	Gujarat Water Supply & Sewerage Board	12,53,680	0
2	Halvad Nagarpalika	3,17,325	0
3	Wadhwan Nagarpalika Chief Officer Surendranagar	13,25,401	0
4	Anjar Municipality	90,271	0
5	Dhrangadhra Nagarpalika	22,55,579	10,87,161
6	Surendranagar Dudhrej Municipality	0	2,79,378



*Signature*

	Total	52,42,256	13,66,539
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10. I find that Municipality/ Nagarpalika is <sup>a statutory creation</sup> ~~a statue created~~ <sup>legislated</sup> by Parliament and is assigned the Powers, authority and responsibilities <sup>of local government</sup> under article 243W of twelfth schedule of the Constitution of India, 1949 which are as under:

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and, commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry protection of the environment. and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, play-grounds.
13. Promotion of cultural, educational and aesthetic aspects.
14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.
15. Cattle ponds; prevention of cruelty to animals.
16. Vital statistics including registration of births and deaths.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.
18. Regulation of slaughter houses and tanneries."

10.1 With regard to Work Order No. GM/Engi/JMG-11C/2015/4330 dated 01.10.2015 issued by the Chief Officer, Gandhidham Nagarpalika for the work of "Repairing of Pay & Use Toilet at Gandhidham" for Rs. 30,00,000/-, the Appellant produced the copy of the said work order. It is on record that the said work order is for repairing of pay & use toilet at Gandhidham which is nothing but a service relating to public health, sanitation conservancy. Thus, I find that the said services provided by the Appellant is exempted by virtue of Sr. No. 25(a) of the Notification No. 25/2012-Service Tax dated 20.06.2012 which is as under:

- "25. Services provided to Government, a local authority or a governmental authority by way of
- (a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or
  - (b) ....;"

Therefore, I find that the Appellant is not liable to pay Service Tax on this work income received from Gandhidham Nagarpalika.



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10.2 With regard to Work Orders No. GM/Engi./JMG-1L/2015/4077 dated 14.09.2015 issued by the Chief Officer, Gandhidham Nagarpalika for the work of "Construction of Wall at Gandhidham Matiyadev Maheshwari Crematorium" for Rs. 3,49,600/- and Work Order No. GM/Engi/JMG-1H/2015/1695 dated 07.05.2015 issued by the Chief Officer, Gandhidham Nagarpalika for the work of "Construction of Protection Wall at Gandhidham Charan Samat Crematorium" for Rs. 1,98,200/-, the Appellant produced the copy of work orders. It is on record that the said work order is for Construction of Wall/ protection wall at Gandhidham Matiyadev Maheshwari Crematorium/ Gandhidham Charan Samat Crematorium, which is nothing but a service related to protection of crematorium. Thus, I find that the said services provided by the Appellant is exempt by virtue of Sr. No. 13(e) of the Notification No. 25/2012-Service Tax dated 20.06.2012 which is as under:

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

*(e) a structure meant for funeral, burial or cremation of deceased;*

Therefore, I find that the Appellant is not liable to pay Service Tax on this work income received from Gandhidham Nagarpalika.

10.3 With regard to (i) Work Order No. GM/Engi/JMG-1I/2015/2169 dated 11.06.2015 issued by the Chief Officer, Gandhidham Nagarpalika for the work of "Construction of School Rooms at Adipur" for Rs. 5,30,868/-, (ii) Work Order No. GM/Engi/JMG-1M/2015/4078 dated 14.09.2015 for the work of "Construction of School Rooms at Sain Xaviers School at Gandhidham" for Rs. 3,03,100/- and (iii) Work Order No. GM/Engi/JM-1E/2015/1689 dated 07.05.2015 for the work of "Construction of Shed at Ahirwas Primary School, Gandhidham" for Rs. 1,68,706/-, I find that the Gandhidham Nagarpalika has to carry out and fulfill the responsibilities under article 243W of twelfth schedule of the Constitution of India, 1949. Further, all these services are related to educational services. I am of considered view that this service provided by the Appellant is squarely covered under Sr. No. 39 of the Notification No. 25/2012-Service Tax dated 20.06.2012 which is as under:

*"39. Services by Government, a local authority or a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution."*

Here in the case on hand, the Appellant has provided the services for the function entrusted to Gandhidham municipality and thus, I find that the Appellant is not liable for Service Tax on the said work income received from Gandhidham Nagarpalika.



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10.4 With regard to income of Rs. 12,53,680/- from Gujarat Water Supply & Sewerage Board, the Appellant produced a copy of work order dated 23.03.2015 issued by Executive Engineer for construction of 300 liter capacity R.C.C. U.G. sump and pump house under Mandavi Part-2 group water works yojana. Since the work is relating to water supply the same is exempted by virtue of Sr. No. 12(e) and 25(a) of the Notification No. 25/2012-Service Tax dated 20.06.2012 and thus, the Appellant is not liable to pay Service Tax on the said income.

10.5 With regard to income of Rs. 3,17,325/- from Halvad Nagarpalika, the Appellant produced a copy of work order dated 20.06.2015 issued by the President, Nagar Palika, Halvad for construction of R. C. C. Np3 class 150/300mm dia S.W.D from musafir khana to goleshvar vistar. This work is related to construction of RCC road which is exempt by virtue of Sr. No. 13(a) of the Notification No. 25/2012-Service Tax dated 20.06.2012 and thus, the Appellant is not liable to pay Service Tax on the said income.

10.6 With regard to income of Rs. 13,25,401/- from Wadhwan Nagarpalika, the Appellant produced a copy of work order dated 30.01.2014 issued by the Chief Officer, Wadhwan Nagarpalika for 250mm dia NP-3 RCC pipe under ground sewerage work at Shriji Darshan and Sahjanand Park area and work order dated 30.01.2014 for construction of RCC Road. These work are related to construction of sewerage treatment or disposal and construction of road which are exempt by virtue of Sr. No. 12(e) and 13(a) of the Notification No. 25/2012-Service Tax dated 20.06.2012 and thus, the Appellant is not liable to pay Service Tax on the said income.

10.7 With regard to income of Rs. 22,55,579/- and Rs. 10,87,161/- from Dhrangadhra Nagarpalika, the Appellant produced a copy of work order dated 06.01.2015 issued by the Chief Officer, Dhrangadhra Nagarpalika for construction of NP3/600mm dia R. C. C. hume pipe gutter. This work is related to sewerage treatment or disposal which is exempt by virtue of Sr. No. 12(e) of the Notification No. 25/2012-Service Tax dated 20.06.2012 and thus, the Appellant is not liable to pay Service Tax on the said income.

11. 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 (Rs. 3,51,87,956/- & 2,19,46,551/- for 2015-16 & 2016-17) than the income reflected in Form 26AS (Rs. 3,09,88,464/- & Rs. 2,12,24,092/- for 2015-16 & 2016-17) and thus demanding Service Tax on income other than income reflected in Form 26AS is nothing but an act to travel beyond the scope of Show Cause Notice. Therefore, the remaining income is not the part of Show Cause Notice and hence, I find that the Appellant is not liable for Service Tax on this income.



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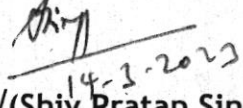
12. In view of the above, I set aside the impugned order and allow the appeal filed by the Appellant.

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

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

सत्यापित / Attested



  
14-3-2023

आर. अंस. बोरीचा / R. S. BORICHA (शिव प्रताप सिंह) / (Shiv Pratap Singh),  
अधीक्षक / Superintendent आयुक्त (अपील) / Commissioner (Appeals)  
के. व. एवं सेवा कर अपीलस, राजकोट

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

To, M/s. Samatbhai Sujabhai Chauhan, Siddheswar Park, P 205 & 206, Anjar-370110.	सेवा में, मे. सामतभाई सुजाभाई चौहाण, सिद्धेश्वर पार्क, P 205 & 206, अंजार-370110।
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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, सुरेन्द्रनगर को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फ़ाइल।



