



::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

Tele Fax No. 0281 - 2477952/2441142 Email: commrapp13-cexamd@nic.in

रजिस्टर्ड डाक ए.डी.द्वारा

DIN- 20230364SX000000D001

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/Date
	GAPPL/COM/STD/195/2022	BHV-EXCUS-000-JC-PK-005-2022-23	23.06.2022

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

BHV-EXCUS-000-APP-094-2023

आदेश का दिनांक / Date of Order:	जारी करने की तारीख / Date of issue:
20.03.2023	24.03.2023

श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / 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. Bindra Construction, 185, Para Vistar, Ingrola, Taluka-Khambha, Ingrola Amreli, Amreli

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

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।/
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to: -

(i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए।/
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- 380016 को की जानी चाहिए।/
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para-1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवाली, 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 रजिस्ट्रार 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 रजिस्ट्रार 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 1994 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 "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 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 :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) 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 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:
- 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 भरी गई केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.
 - 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 ज्यूटी क्रेडिट 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 समयावधि 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 रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
 - 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.
 - 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 टिकिट 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 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.
 - उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in.



:: अपील आदेश / ORDER-IN-APPEAL ::

The Assistant Commissioner, CGST Division-III, Bhavnagar has filed Appeal No.GAPPL/COM/STD/195/2022 on behalf of the Commissioner, Central GST & Central Excise, Bhavnagar (hereinafter referred to as "Appellant-Department") in pursuance of the direction and authorization issued under Section 84 of the Finance Act, 1994 (hereinafter referred to as 'Act') against Order-in-Original No. BHV-EXCUS-000-JC-PK-005-2022-23 dated 23.06.2022 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST HQ, Bhavnagar (hereinafter referred to as 'adjudicating authority') in the case of M/s. Bindra Construction, Ingorala (hereinafter referred to as 'Respondent').

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 Respondent. Letter dated 15.04.2021 was issued by the Jurisdictional Range Superintendent requesting the Respondent to provide information/documents viz. copies of I.T. Returns, Form 26AS, Balance Sheet (including P&L Account), VAT/ Sales Tax Returns, Annual Bank Statement, Contracts/ Agreements entered with the persons to whom services provided etc. for the Financial year 2015-16 & 2016-17. However, no reply was received from the Respondent.

3. In absence of data/ information, a Show Cause Notice dated 20.04.2021 was issued to the Respondent, demanding Service Tax and cess to the tune of Rs. 1,62,03,085/- 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(2), 77(1)(c) and 78 of the Act upon the Respondent.

4. The adjudicating authority vide the impugned order, after analyzing the documentary evidences, dropped the entire proceedings initiated against the Respondent demanding Service Tax of Rs. 1,62,03,085/- under Section 73(1) along with interest under Section 75 of the Act, penalty under Section 78 of the Act, penalty under Section 77(1)(c) & 77(2) of the Act.

5. Being aggrieved, the Appellant-Department has preferred the present appeal on various grounds that the Adjudicating Authority at para 3.7 of the impugned order found that the Respondent have received income of Rs. 52,02,928/- and Rs. 3,20,87,864/- during the F.Y. 2015-16 & F.Y. 2016-17, respectively from Ahmedabad Municipal Corporation. The Respondent has provided service having scope of work related to Distribution network of water supply and construction of road which are exempt by virtue of Sr. No. 12(e) & 13(a) of the Notification No. 25/2012-Service Tax dated 20.06.2012 and hence



(Signature)

the Respondent is not liable to Service Tax.

5.1 The Appellant-Department contested that the Adjudicating Authority has failed to appreciate that the Respondent's service to Ahmedabad Municipal Corporation is not related to water supply. As per work orders referred by the Adjudicating Authority at Para 2.7 at Sr. No. (5) & (6) both dated 21.12.2015 issued by D. CT Engineer (2) Nagar Palika Zone to the Respondent having subject "Labour work of Distribution network of household connection at Mahatma Gandhi Society, Gota Ward, New Paschim Zone" & "Labour work of Distribution network of household connection at Vasant Township, Gota Ward, New Paschim Zone". It is the contention of the Appellant-Department that both the work orders allotted to the Respondent were not related to pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal and thus the exemption benefit claimed and granted to the Respondent by virtue of Sr. No. 12(e) of Notification No. 25/2012-Service Tax dated 20.06.2012, as amended, is not legal and proper. Therefore, the Respondent is liable to pay Service Tax amount of Rs. 55,67,605/- on the total income of Rs. 3,72,90,792/- (Service Tax Rs. 7,54,425/- @14.5% of income of Rs. 52,02,928/- for F.Y. 2015-16 and Service Tax Rs. 48,13,180/- @ 15% of income of Rs. 3,20,87,864/- for F.Y. 2015-16) since the Respondent has not provided any bifurcation of income for various works.

5.2 The Adjudicating Authority at Para 3.11 of the impugned order found that the Respondent have received income of Rs. 39,83,428/- during the F.Y. 2015-16 from Prakash T. Kher. The Respondent submitted the work orders issued by the Executive Engineer, PWD Dadra and Nagar Haveli, Silvassa issued to Prakash T. Kher and letter issued by Shri Prakash T. Kher to the Respondent as sub-contractor as enumerated at Para 2.7 (Sr. No. 15) having scope of work related to Deepening of existing village pond at Surangi Dasrutipada, Silvassa. The Adjudicating Authority found that the services have been provided as sub-contractor by the Respondent to the main contractor i.e. Prakash T. Kher which in turn has received contract from Government authorities i.e. Executive Engineer, PWD as a government authority. The services provided was exempted by virtue of Sr. No. 12(d) of the Notification No. 25/2012-Service Tax dated 20.06.2012, as amended, to the main contractor only and not to the sub-contractor. It is the contention of the Appellant-Department that the exemption benefit claimed/ granted by virtue of Sr. No. 12(d) of the Notification No. 25/2012-Service Tax dated 20.06.2012 to the Respondent as a sub-contractor is not legal and proper because the exemption from Service Tax liability to Respondent (as sub-contractor) is only available by virtue of Sr. No. 12(d) read with Sr. No. 29(h) of the Notification No. 25/2012-Service Tax dated 20.06.2012, as amended. Whereas, the Sr. No. 29(h) of the Notification No. 25/2012-Service



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Tax says that sub-contract has to be a work contract, whereas, the Adjudicating Authority has failed to verify and establish that contract/ agreement between main contractor and sub-contractor is of works contract services. Therefore, the Respondent is liable to pay the Service Tax of Rs. 5,77,598/- @ 14.5% on the works income of Rs. 39,83,428/- for F.Y. 2015-16 received from Prakash T. Kher. The Appellant-Department also relied upon the decision of Hon'ble Supreme Court in the case of Dilip Kumar & Company - 2018 (361) ELT 577 (S.C.).

6. The Respondent filed Cross Objection vide dated 24.02.2023, *inter alia*, contending that the Ahmedabad Municipal Corporation (AMC for sake of brevity) issued E-tender Notice No. 3/2015-16 for water supply distribution network from proposed ESR (Elevated Surface Reservoir) in Vasant Nagar Township and Mahatma Gandhi Township in Gota Ward of AMC area. The said project was proposed to lay DI K-9 pipe of different diameter, GI Pipe, CI, DI & GI specials, CI Sluice valves and GI gun metal cock. The project includes lowering, laying and jointing DI K-9 pipes for distribution system along with fixing of sluice vales, construction of valve chamber, joining the proposed pipeline to existing distribution pipeline, excavation for pipeline trenches and valve chamber, excavation of asphalt pavement & reinstatement of the same, backfilling and transportation of excess material as per the lead specification in the tender. Therefore, laying of pipe line network from Elevated Surface Reservoir (ESR) (storage facility) to house hold connection is only intended for water supply, by AMC in the interest of general public, which clearly falls under Sr. No. 12(e) of Notification No. 25/2012-Service Tax dated 20.06.2012. Thus, the exemption claimed and granted to them is legal and proper. They also placed reliance on Circular No. 199/09/2016-Service Tax dated 22.08.2016 wherein it has been clarified that "the phrase 'water supply' is a general phrase. Basically, it will involve providing users, access to a source of water. The source may be natural or artificial like tanks, wells, tube wells etc. Providing users access to such a source will involve construction of the source (if artificial) and transmission of water to the use. It will involve activities like drilling, laying pipes, valves, gauges etc., fitting of motors, testing etc., so as to eventually result in the supply of water. Similarly, the word plant has to be understood and interpreted with reference to the context..."

6.1 With regard to deepening of existing village pond at Surangi, Dasturipada, Silvassa, the Respondent submitted that factually the deepening of existing village pond at Surangi, Dasturipada, Silvassa is a works contract service provided as sub-contractor to main contractor Prakash T. Kher, for contract received from Executive Engineer, PWD, a government authority. The Respondent describe of works contract for deepening of existing village pond as under:

Amj



1. Earth work in cutting in hard murrum including preparing the slope and camber and stacking or utilizing the cutting stuff in bank as directed upto 200 meters from the end of cutting with all lead and lift.

2. Earth work in cutting in soft rock not required blasting including preparing the slope and camber and stacking or utilizing the cutting stuff in bank as directed upto 200 meters from the end of cutting with all lead and lift.

3. Rolling of earth work in layer with power roller including filling in depression which occur during the process including watering of earth as directed.

They stated that in case of deep cutting of filling a side slop of 1:1 or 1:2 (i.e. 2 horizontal and 1 vertical) is usually maintained. If it is required to put new soil over old soil, benching is required to be done so that a perfect bonding between old and new soil is achieved. Benching means construction of steps. Apart from the above earthwork is required to be carried out in the construction of ponds. It may require either cutting or filling. During excavation different types of soil layers will get. For this a reformed line is required to be made for controlling the width and direction of water. Catch water drains are made on the sides of the cutting which takes out the water from the pond. To protect pond and area surrounding of pond in case of overflow of pond, six RCC chamber of four-meter width and four-meter depth and having 600 mm thickness have been made around it. For this, all the material of cement, metal, sand etc. are used by them. Thus, it establishes that the deepening of existing village pond is a works contract service provided as sub-contractor to main contractor. That there is no denial in the ground of appeal itself that the nature of work done by the Respondent are services specified at Sr. No. 12(d) of the Notification No. 25/2012-Service Tax dated 20.06.2012. There are 64 entries in the Notification No. 25/2012-Service Tax dated 20.06.2012 and all the entries are independent of each other. And where the benefit of an entry intended to restrict, specific provisions are provided for each entry separately, such as entry No. 9, 12A, 14A, 16, 34, 54 56 and 61, unlike such entries there is no restriction provided in entry No. 12(d) of the Notification No. 25/2012-Service Tax.

7. Personal hearing in the matter was held on 24.02.2023. Shri Bindesh J. Shah and Shri Rakshit J. Bhesaniya both advocate appeared for personal hearing and handed over cross objections to the appeal with supporting documents in a box file. They reiterated the contentions raised therein. They submitted that they provided services of laying pipeline for drinking water supply and works contract service as a sub-contractor. Both of these services are exempt under the mega exemption Notification No. 25/2012-Service Tax. Based on the evidence provided, the Adjudicating Authority has correctly dropped the demand under the Show Cause Notice. However, the department has filed the appeal on wrong assumptions. They submitted that there is no need to club entry Sr. Nos.



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12(d) and 29(h) of the Notification. In this regard they have enclosed Order-In-Appeal passed by Commissioner (Appeals), Jaipur. In view of above they requested to uphold the Order-In-Original and to reject the appeal.

8. I have carefully gone through the case records, Show Cause Notice, impugned order, cross objection filed by the Respondent and the submissions at the time of personal hearing and appeal memorandum filed by the Appellant-Department. I find that the main issue that is to be decided in the instant case is whether (i) the service relating to Distribution network of water supply and construction of road are exempt by virtue of Sr. No. 12(e) & 13(a) of the Notification No. 25/2012-Service Tax dated 20.06.2012 or otherwise. As per work orders referred by the Adjudicating Authority at Para 2.7 at Sr. No. (5) & (6) both dated 21.12.2015 issued by D. CT Engineer (2) Nagar Palika Zone to the Respondent having subject "Labour work of Distribution network of household connection at Mahatma Gandhi Society, Gota Ward, New Paschim Zone" & "Labour work of Distribution network of household connection at Vasant Township, Gota Ward, New Paschim Zone" (ii) the work orders issued by the Executive Engineer, PWD Dadra and Nagar Haveli, Silvassa issued to Prakash T. Kher and letter issued by Shri Prakash T. Kher to the Respondent as sub-contractor as enumerated at Para 2.7 (Sr. No. 15) having scope of work related to Deepening of existing village pond at Surangi Dasrutipada, Silvassa. The Adjudicating Authority found that the services have been provided as sub-contractor by the Respondent to the main contractor i.e. Prakash T. Kher which in turn has received contract from Government authorities i.e. Executive Engineer, PWD as a government authority. The service provided was exempted by virtue of Sr. No. 12(d) of the Notification No. 25/2012-Service Tax dated 20.06.2012, as amended, to the main contractor. It is the contention of the Appellant-Department that the exemption benefit claimed/ granted by virtue of Sr. No. 12(d) of the Notification No. 25/2012-Service Tax dated 20.06.2012 to the Respondent as a sub-contractor is not legal and proper because the exemption from Service Tax liability to Respondent (as sub-contractor) is only available by virtue of Sr. No. 12(d) read with Sr. No. 29(h) of the Notification No. 25/2012-Service Tax dated 20.06.2012, as amended which prescribes that sub-contract has to be a work contract. The Adjudicating Authority has failed to verify and establish that contract/ agreement between main contractor and sub-contractor is of works contract services.

9. Contention of the Appellant-Department is that the Adjudicating Authority has failed to appreciate that the services by the Respondent to Ahmedabad Municipal Corporation having subject "Labour work of Distribution network of household connection at Mahatma Gandhi Society, Gota Ward, New Paschim Zone" & "Labour work of Distribution network of household connection



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at Vasant Township, Gota Ward; New Paschim Zone" were not related to pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal and thus the exemption benefit claimed and granted to the Respondent by virtue of Sr. No. 12(e) of Notification No. 25/2012-Service Tax dated 20.06.2012, as amended, is not legal and proper. Therefore, the Respondent is liable to pay Service Tax amount of Rs. 55,67,605/- since the Respondent has not provided any bifurcation of income for various works.

9.1 I find that the Respondent has provided cross objections with supporting documents in a box file running into about 600 pages which contains copy of two work orders dated 21.12.2015 in relation to E-Tender No. 3/2015-16 applied and approved by the AMC for an amount of Rs. 2,17,17,406.39 and Rs. 2,22,90,342.50 for providing labour work for distribution network and house hold connection in new west zone, Gota Ward in Mahatma Gandhi Vasant and Vasant Nagar Township with A-2: Memorandum of works.

10. I find that the Adjudicating Authority has not gone into the detailed verification of the copies of work orders and its related documents which resulted into an appeal by the Appellant-Department. Therefore, I am of considered view that voluminous documents submitted by the Respondent at appeal stage are required to be verified after physical inspection of the work sites before allowing the benefit to the Respondent. Therefore, I am of considered view that the case should be remanded back to the Adjudicating Authority, who shall call for all the relevant documents and decide the matter in *de novo* by passing speaking order. The Respondent is also directed to provide required information as and when called upon by the adjudicating authority. Needless to mention that Order in *de novo* proceeding shall be passed by adhering to the principles of natural justice.

11. I set aside the impugned order and dispose of the appeal by way of remand to the adjudicating authority for *de novo* consideration.

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

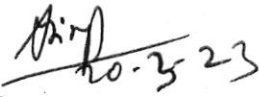
12. The appeal filed by Appellant is disposed off as above by way of remand.

सत्यापित / Attested



भार. भेस. बोरीचा / R. S. BORICHA
अधीक्षक / Superintendent

By R.P.A.D. एवं सेवा कर अपील, राजकोट
CGST Appeals, Rajkot



(शिव प्रताप सिंह)/(Shiv Pratap Singh)

आयुक्त (अपील)/Commissioner (Appeals)

To,
M/s. Bindra Construction, 185,
Para Vistar, Ingorala, Taluka:
Khambha, Dist. Amreli-365635.

सेवा में,
मे. बिन्द्रा कन्स्ट्रक्शन, 185, परा
विस्तार, इंगोराला, तालुका: खांभा, जिल्ला:
अमरेली-365635 ।





- 1) मुख्य आर्यकत, वर्सुत एव सेवा कर एव केन्द्रीय उत्पाद शुल्क, गजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आर्यकत, वर्सुत एव सेवा कर एव केन्द्रीय उत्पाद शुल्क, भावनगर आर्यकतनाथ, भावनगर को आवश्यक कार्यावाही हेतु।
- 3) अपर/सर्वकत आर्यकत, वर्सुत एव सेवा कर एव केन्द्रीय उत्पाद शुल्क, भावनगर को आवश्यक कार्यावाही हेतु।
- 4) सहायक आर्यकत, वर्सुत एव सेवा कर एव केन्द्रीय उत्पाद शुल्क मण्डल-3, भावनगर को आवश्यक कार्यावाही हेतु।
- 5) गार्ड फाइल।

प्रतिलिपि :-

