



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

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan
रेस कोर्स रिंग रोड / Race Course Ring Road

राजकोट / Rajkot - 360 001

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सत्यमेव जयते

रजिस्टर्ड डाक ए.डी.द्वारा

DIN- 20230364SX0000444A29

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	GAPPL/COM/STP//1408/2022	BHV-EXCUS-000-JC-PK-026-2021-22	3/31/2022

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

BHV-EXCUS-000-APP-097-2023

आदेश का दिनांक / Date of Order:	23.03.2023	जारी करने की तारीख / Date of issue:	23.03.2023
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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 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 :-

Shradha Enterprise (Chetanbhai Chandubhai Shiyal) Opposite Mehta Hospital,, Tower
Chowk, Jafrabad-365540, Dist.- Amreli, 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, आर^०
के^० 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- ३८००१६ 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) 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
- (i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की ली गई गलत राशि
(iii) 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 इकाई, 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 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.
- (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 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 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 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 OI 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।
जहाँ 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 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.
- (G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbcc.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.cbcc.gov.in.





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(i) The Adjudicating Authority erred both in law and on facts in not accepting or considering documents submitted by them on the issues for which the Adjudicating Authority has not accepted the facts of the matter and made various grounds as stated below:

5. Being aggrieved, the Appellant has preferred the present appeal on Adjudicating Authority dropped the demand of Rs. 25,50,008/-.

4. The above Show Cause Notice was adjudicated by the adjudicating authority vide the impugned order who confirmed Service Tax demand of Rs. 32,11,833/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs. 32,11,833/- under Section 78 of the Act, imposed penalty of Rs. 10,000/- each under Section 77(2) and 77(1)(c) of the Act. The Adjudicating Authority dropped the demand of Rs. 25,50,008/-.

3. In absence of data/information, a Show Cause Notice dated 29.12.2020 was issued to the Appellant, demanding Service Tax and cess to the tune of Rs. 57,61,841/- 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) & Section 78 of the Act upon the Appellant.

The facts of the case, in brief, are that the Income Tax Department shared the third party information/ data based on Income Tax Returns/ 26A5 for the financial year 2015-16 & 2016-17 of the Appellant. Preliminary scrutiny of the income reported in Income Tax Return and amounts received for various services rendered by the Appellant to various customers, as ascertained from TDS data for the financial year 2015-16 & 2016-17, indicated that same were in excess of the value of services as declared by the Appellant in Form S.T.-3 for financial year 2015-16 & 2016-17. In S.T.-3 form, the Appellant was required to make a declaration of the value of all the services including exempted services, provided by them. In order to verify whether they had properly discharged the Service Tax liability during the financial year 2015-16 & 2016-17, letter dated 18.08.2020 & 03.12.2020 were issued to the calling for relevant documents for verification and asking them to furnish reconciliation in respect of the gap. However, the Appellant did not respond to the letters issued by the Department.

M/s. Shradha Enterprise (Chetanbhai Chandubhai Shiyal), Jatrabad (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. BHV-EXCUS-000-JC-PK-026-2021-22 dated 31.03.2022 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST, HQ, Bhavnagar (hereinafter referred to as 'adjudicating authority').

:: अर्थात् आदेश / ORDER-IN-APPEAL ::

unwarranted demands of Service Tax alongwith interest and penalty. The demand in the Show Cause Notice is more than Rs. 50 Lakhs and so it is mandatory requirement as per Circular No. 116/13/2020-CK.3 dated 19.11.2020 to issue pre-Show Cause Notice, prior to issuance of Show Cause Notice since the demand of duty is above Rs. 50 Lakhs. However, the same has not been done and thus, the Show Cause Notice itself is null and void and so the impugned order.

(ii) The adjudicating authority has confirmed the demand of Service Tax for services classified under Site Formation Services on basis of various invoices issued to M/s. Keller Ground Engineering India Pvt. Ltd. for transportation of sand for Rs. 1,64,01,309/- and supply of labour for Rs. 36,63,574/- under site formation service is against law. They had issued single bill for transportation of sand for each and every month for 1st half of FY 2015-16 and on looking and going through the said invoice, it is clear that each invoice contain only details about transportation of sand during particular month as well as rate and quantity of sand transported for the said month at a site located at Pipavav Port site (APM Terminal Pipavav site- which is registered as a Port Area) and further looking to quantity of sand contained in the invoices clearly shows that it is not a consignment copy issued by Goods Transport Agency. As per Section 66D(p)(i)(A), they are not liable to Service Tax. When there is clear mention in invoices issued for transportation of sand then how the Adjudicating Authority has considered the said invoices under site formation service and demanded the Service Tax on the said service. Thus, invoices aggregating to Rs. 1,64,01,309/- issued for transportation of sand and confirmation of Service Tax demand under site formation by the Adjudicating Authority is unfair, illegal and bias against them.

(iii) The Adjudicating Authority considered services provided to M/s. Keller Ground Engineering India Pvt. Ltd. for supplying of labour for Rs. 36,63,574/- which has been considered by the Adjudicating Authority as site formation services instead of classifying as Man Power Supply Services. They had issued invoices to provide labour as per company's requirement for sand filling and compaction work and payment made by the company was related to numbers of labour supplied during the period under reference and not related to quantum of work carried out by them. On going through the invoices raised for the same, it is seen that invoices contain rate of labour and not a quantity of work done. The manpower service provided to M/s. Keller Ground Engineering India Pvt. Ltd. is either exempted as services provided at Port Area covered under mega exemption Notification No. 25/2012 or the receiver of services is liable to pay Service Tax on reverse charge mechanism and not the Appellant.



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(iv) The invoices issued for manpower supply services to the extent of Rs. 36,63,574/- also contain details of sand for payment to be received by the M/s. Keller Ground Engineering India Pvt. Ltd. and in the present case since they have admittedly supplied the material, there is a transfer of property of the said material. Thus, overall job subjected to payment of VAT which was paid by them and they submitted various documents which shows that the job undertaken by them has suffered VAT liability and they submitted a copy of VAT return. The work is sand filling and compaction work at Approach Road at Pipavav Port Area (APM Terminals) which falls under Industrial & Commercial Construction service. The said construction is undisputedly of an immovable property. With this fulfilment of the criteria, the services is squarely covered under the category of works contract service and the services provided by them does not fall under Site Formation Services. Thus, the impugned order demanding Service Tax under the site formation services is required to be quashed.

(v) The Service Tax demand on account of Rs. 20,40,000/- as advanced received and the customers have deducted TDS, which is a payment of security and the payment for the services are made in progressive manner during the execution of the contract. The advance amount given by the customer is reduced in proportion to the value of work completed as shown in the invoices raised upto any stage of work executed as per the terms of the contract and Service Tax is paid on the invoice value on accrual basis. Thus, so called advance is only in the nature of security deposit to ensure contractual commitments and the same is shown as current liability in the Books of Account. The Service Tax is paid on the advance at the time of raising of invoices and therefore, there is no liability to pay Service Tax again on the advances and they submit the copy of Audit Report in support of their claim. In the next year i.e. 2017-18, they paid Service Tax and GST on amount of Rs. 2,10,00,568/- and while looking to income tax data - 26AS, they had provided services to the extent of Rs. 1,32,01,376/-, that means income tax data is not relevant for payment of Service Tax or GST. They have paid applicable taxes in very next year at the time of raising invoices with applicable tax. Thus, they requested to set aside the impugned order so that they have not to pay Service Tax again.

(vi) The strongly contend and object the extended period of limitation under Section 73(1) as the same end on 24.09.2020 after taking into consideration terms of Section 6(a) of the Taxation and Other Laws (relaxations and amendments of certain provisions) Act, 2020 (No. 38 of 2020) and thereby stated date extended upto 31.12.2020. In the Show Cause Notice, the said content was nowhere mentioned or stated while in the impugned order, the same was mentioned, which is against the law and thus the impugned order being illegal is



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liable to be set aside. They relied upon the Circular No. 157/13/2021-GST. The impugned order passed by the Adjudicating Authority without considering the facts as there was no evasion of Service Tax and thus, question of demand of Service Tax, interest and penalties does not arise at all.

6. The matter was posted for hearing on 17.03.2023. Shri Mahesh Ladumor, tax practitioner appeared for personal hearing and submitted that they had transported sand for M/s. Kellar Ground Engg. (I) Pvt. Ltd. and for the transport service rendered by them, the Service Tax liability was discharged by recipient on reverse charge mechanism basis. In this regard he submitted a letter dated 24.02.2023 from M/s. Kellar Ground Engg. (I) Pvt. Ltd. Regarding advance payment of Rs. 20.4 Lakhs he submitted that the tax liability was fully stated as liability in the balance sheet of 2016-17 and was paid in the financial year 2017-18, as may be seen from the annual return GSTR-9 for 2017-18. He submitted a copy of Form 26AS for financial year 2017-18 and pointed out that the tax paid in 2017-18 was more than the receipts shown in Form 26AS and it included tax paid on the advance receipt of Rs. 20.40 Lakhs. Therefore, he requested to set aside the demand and penalties in the impugned order.

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. 25,50,008/- out of total demand of Rs. 57,61,841/-.

9. The Adjudicating Authority at para 3.9 to 3.10, after analyzing the invoices found that the said invoices are for labour charges for sand filling and compaction work alongwith transportation service, the said service provided by them is called site formation service and after 01.07.2012, all the services which are not in negative list are taxable. On the other hand the Appellant produced copies of invoices wherein the month-wise details of transportation of sand including quantity in MT, rate per MT and bill amount has been mentioned. In some invoices, rate for labour and rate for material has been mentioned. On material amount, the Appellant has charged 5% VAT from the customers. They have also produced copies of VAT returns filed by them. Thus, all these material facts reveal that the findings recorded by the Adjudicating Authority are far from the reality. Since the VAT is paid by the Appellant, no Service Tax can be



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demanded from them. The Appellant also produce copy of letter dated 24.02.2023 issued by the service receiver i.e. M/s. Kellar Ground Engg. (I) Pvt. Ltd., wherein they have stated that they have paid Service Tax on reverse charge mechanism basis for transportation service and manpower supply service. Therefore, I am of considered view, that the Appellant is not liable to pay Service Tax on an amount of Rs. 2,00,64,883/- earned from M/s. Kellar Ground Engg. (I) Pvt. Ltd. The findings recorded by the Adjudicating Authority in this regard and misplaced and not tenable in terms of documentary evidences produced by the Appellant.

10. With regard to Service Tax demand on an amount of Rs. 20,40,000/-, the Adjudicating Authority found that in terms of Section 3(b) of Determination of point of taxation Rules, the Appellant is liable to pay Service Tax on advance received by them since the Appellant providing the service, received a payment before the time specified in clause (a), at the time, when the Appellant receives such payment, to the extent of such payment. The clause (a) reads that 'the time when the invoice for the service provided or agreed to be provided is issued:'. The relevant excerpts of the Point of Taxation Rules, 2011 is reproduced below:

3.Determination of point of taxation.- For the purposes of these rules, unless otherwise provided, 'point of taxation' shall be,-

(a) the time when the invoice for the service provided or agreed to be provided is issued:

Provided that where the invoice is not issued within the time period specified in rule 4A of the Service Tax Rules,1994, the point of taxation shall be the date of completion of provision of the service.

(b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment.

Provided that for the purposes of clauses (a) and (b),-

(i) in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service;

The Adjudicating Authority has relied upon clause (b) and found that the Appellant is liable to pay Service Tax. However, he overlooked the proviso (i) appended after clause (a) and (b) which states that in case of continuous supply of service where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of

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completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service. I am of considered view that the services provided by the Appellant are covered under proviso (i) appended after clause (a) and (b) and hence they are liable to pay Service Tax on issuance of invoice and not on receipt of advance. As per contention of the Appellant during the course of personal hearing and on verification of balance sheet for the year 2016-17, it is on record that they have shown Rs. 20,40,000/- as advance from customers and they have also shown Rs. 1,40,374/- as Service Tax payable. Therefore, they are not liable to pay Service Tax on advance received by them during the year 2016-17 as the same is payable during the year 2017-18 only.

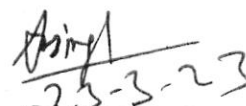
10. In view of above, I set aside the impugned order and allow the appeal filed by the Appellant.

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

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

सत्यापित / Attested





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

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

To, M/s. Shradha Enterprise (Chetanbhai Chandubhai Shiyal), Opp.: Mehta Hospital, Tower Chowk, Jafrabad, Dist.: Amreli- 365540.	सेवा में, मे. श्रद्धा एंटरप्राइस (चेतनभाई चंदुभाई शियाल), मेहता हॉस्पिटल के सामने, टॉवर चोक, जाफराबाद, जिल्ला: अमरेली-365540।
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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-3, भावनगर को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फ़ाइल।

