



:: 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



सत्यमेव जयते

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रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN-20230264SX0000923859

क	अपील / फाइल संख्या/ Appeal / File No. V2/102/RAJ/2022 GAPPL/COM/STD/84/2022	मूल आदेश सं / OIO No. 57/JC(MAN)/2021-22	दिनांक/ Date 22-03-2022
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ख अपील आदेश संख्या (Order-In-Appeal No.):

RAJ-EXCUS-000-APP-033 TO 034-2023

आदेश का दिनांक / Date of Order:	07.02.2023	जारी करने की तारीख / Date of issue:	08.02.2023
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श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /

Passed by Shri Shiv Pratap Singh, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर,
राजकोट / जामनगर / गांधीधामा 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. Jivrajbhai Balubhai Choudhary (Prop. New Balaji Drilling & Blasting Contractor), Opp. Moti Khodiyar Mandir, Wankaner Road, Thangadh-363530, Surendranagar.

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.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 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) नियमवली, 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, जहाँ उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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 जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 नियमवली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है 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, जहाँ सेवाकर की माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये 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 जहाँ संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 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 सकती 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 (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होगा। / For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(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 कोपनरीक्षण 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 (नं 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 संप्रषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। / The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
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.
- (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 पत्री 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.
- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 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 बर्णित 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.
- (G) 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

Jivrajbhai Balubhai Choudhary, Prop. New Balaji Drilling & Blasting Contractor, Opp. Moti Khodiyar Mandir, Wankaner Road, Thangadh-363 530, Dist. Surendranagar (*hereinafter referred to as appellant*) has filed appeal No.V2/102/RJ/2022 against Order-in-Original No. 57/JC(MAN)/2021-22 dated 22.03.2022 (*hereinafter referred to as 'impugned order'*) passed by the Joint Commissioner, Central GST, Rajkot (*hereinafter referred to as 'adjudicating authority'*). Appeal No.GAPPL/COM/STD/84/2022 was also filed by the department against the impugned order.

2. Briefly stated, the facts of the case are that a show cause notice dated 29.09.2020, demanding service tax of Rs.83,87,008/- was issued to the appellant on the basis of data received from Income Tax department for the period 2014-15, 2015-16 and 2016-17. The adjudicating authority, after considering the submissions made by the appellant, has confirmed the demand of Rs.47,69,589/- along with interest. He also imposed penalty of Rs.47,69,589/- under Section 78, Rs.10,000/- under Section 77(1)(a), Rs.10,000/- under Section 77(1)(c) and Rs.10,000/- under Section 77(2) of the Finance Act, 1994 on the appellant.

3. The appellant filed appeal wherein they, *inter alia*, contended as under:

- In show cause notice or Order-in-Original it is nowhere mentioned that which ingredient of Section 72 is attracted. Provisions of Section 72 of the Finance Act, 1994 is for the purpose of determining value of taxable service and not for the purpose of determining nature of services.
- The appellant is engaged in the activity of laying of pipeline for water supply by way of drilling and blasting meant for Saurashtra Narmada Avataram Irrigation Yojna ('Sauni Yojna') for Government of Gujarat. The appellant is doing said work as sub-contractor or sub to sub-contractor with material and labour and hence is a 'work contractor'. Therefore, services provided by the appellant is exempt under clause 12(e) read with clause 29(h) of Notification No.25/2012-ST dated 20.06.2012. The appellant given the name of contractors and the amount year-wise in tabular form.
- In any case it is on record that activity carried out by the appellant is work contract and same being original work, value of taxable service should be 40% of Total Gross Receipts as per Rule 2A of the Service Tax (Determination of Value) Rules and accordingly service tax is to be calculated.

(Signature)



- Board has made pre-show cause notice consultation mandatory with assessee in cases involving demand of duty amount Rs.50 lakhs as per Master Circular No.1053/2/2017-CX dated 10.03.2017. However, no such consultation is done and SCN is issued in haste without following proper procedure laid down by the Board. Hon'ble Gujarat High Court in case of *Dharamshil Agencies in Civil Application No.8255 of 2019* quashed SCN issued without providing effective opportunity of hearing in pre-show cause notice consultation. Further, Hon'ble Delhi High Court in the case of *Back Office IT Solutions Pvt Ltd-2021 (4) TMI.520* held that the department has to mandatorily issue a pre-show cause notice consultation.
- The demand of service tax is time barred as the show cause notice is served beyond a normal period of thirty months from relevant date as there is no suppression etc with an intent to evade payment of service tax on their part.
- SCN is issued only based on Income Tax data, which were filed/available much earlier than date of issue of show cause notice and hence the information is available since then. Therefore, there is no scope for invoking extended period of limitation. The appellant relied on the decision of Hon'ble CESTAT in Service Tax Appeal No.70707 of 2018 in case of *M/s Pappu Crane Service*.
- Activity carried out by the appellant is of pipeline for water supply related to Sauni Yojna of Government of Gujarat and these works are executed before the eyes of general public. In the above circumstances it cannot be said that there is suppression with an intent to evade the payment of tax. The appellant relied on the decision of *Gammon India Ltd-2002 (146) ELT.173 (Tri-Mum)*.
- Based on bonafide belief that they were not required to pay service tax they have not registered and nothing was required to be disclosed before service tax department. They relied upon the cases of *Apex Electricals (P) Ltd-1992 (61) ELT.413 (Guj)*, *Pahwa Chemicals P. Ltd-2005 (189) ELT.257 (SC)*, *Chemphar Drugs & Liniments-1989 (40) ELT.276 (SC)*, *NRC Ltd-2007 (5) STR.308 (Tri-Mum)*.
- There should be not only ingredient or element for invoking extended period of limitation but active element or ingredient is must and it should be clearly brought out in SCN. In the present case no such active element is brought out by the department.
- They have not collected any amount of service tax and in this situation it cannot be said that they have deliberate intention to evade payment of service tax.



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- Show cause is time barred at least so far it demands service tax pertaining to the period from 01.04.2014 to 30.09.2014 as the SCN was issued after 5 years.
- The show cause notice has been issued on the basis of data received without verification and without conducting any inquiry and hence demand cannot be confirmed. The appellant relied upon the cases of *Indo Nippoh Chemicals-2009 (16) STR.639 (Tri-Ahmd)*, *Creative Travel Pvt Ltd-2016 (41) STR.134 (Tri-Del)*, *Purni Ads Pvt Ltd-2010 (19) STR.242 (Tri-Ahmd)*.
- No fresh proceedings can be initiated after introduction of GST in view of Section 174(2)(e) of CGST Act, 2017.
- No penalty is imposable as the demand is not sustainable.

4. The department filed appeal on the ground that the adjudicating authority has erred in arriving at the conclusion that the service provided by the appellant in respect of M/s Ibiza Inframech Pvt Ltd is 'works contract' service as the appellant has carried out 'drilling/digging/site formation and site preparation work, which does not fall under the purview of 'works contract service' and accordingly, the exemption as per Sr. No.12(e) read with Sr..No.29(h) of Notification No.25/2012-ST is not admissible.

5. Chartered Accountant Keyur P. Radia, appeared for personal hearing on 23.12.2022 and reiterated the submissions made in the grounds of appeal. He submitted that the appellant is based in Rajasthan and has merely provided service in Gujarat for which he had erroneously filed ITR using Gujarat C/o address. As his business is being conducted from Rajasthan, adjudicating authority has no jurisdiction to issue show cause notice and decide the case. Further, the appellant was rendering service to Government department through main contractors as sub-contractor. The same is exempted from service tax. The appellant had made this submission before adjudicating authority who dropped part of the demand since appellant had not produced documents in respect of remaining contracts. The appellant has now produced the documents such as copy of contract to the main contractor and copy of sub-contract issued to the appellant, working sheet etc. He further submitted that mandatory pre-SCN consultation was not granted in this case. Also, the letters asking information were received after issuance of show cause notice and no proper inquiry was made for proper verification of nature of service provided by appellant before issuing the show cause notice. Therefore, the SCN is void and order-in-original needs to be set aside. He submitted a copy of Tribunal order No.10801/2022 dated 15.07.2022 in support of his case.

I have carefully gone through the facts of the case, the impugned order,

(Signature)



the appeal memorandum and written as well as oral submissions made by the Appellants. The issues to be decided is whether the impugned order, in the facts of this case, confirming demand and imposing penalty is correct, legal and proper or not and whether adjudicating authority has correctly granted exemption to the work carried out in respect of work order of M/s Ibiza Inframech Pvt Ltd.

7. First of all I take up the appeal filed by the department. I find that the show cause notice was issued only on the basis of the data received from Income Tax department without ascertaining the nature of service provided by the appellant. The adjudicating authority has considered the evidences produced before him and dropped part of the demand in respect of work order of M/s Ibiza Inframech Pvt Ltd on finding that the appellant had provided 'works contract' service in relation to laying of pipeline for supply of water for Government of Gujarat. The adjudicating authority, therefore, held that the service provided by the appellant is exempted under clause 12(e) read with clause 29(h) of Notification No.25/2012-ST dated 20.06.2012. The only contention raised by the department in the present appeal is that the work carried out by the appellant is not 'works contract service' but carried out 'drilling/digging/site formation and site preparation work, which does not fall under the purview of 'works contract service'.

8.1 In this regard, I find that the exemption as per Sr.No.12(e) of Notification No.25/2012-ST dated 20.06.2012 is not particularly to 'works contract service' only, but the exemption is granted to all type of services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of pipeline. Sr. No.12 of the said notification reads as under:

12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);

(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;

(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act;

8.2 The adjudicating authority has observed that appellant has provided the



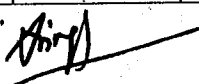
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service for construction of pipeline and the same has not been disputed by the department also. Since the service provided by the appellant is in relation to construction of pipeline, the same is covered under exemption as per Sr.No.12(e) of Notification No.25/2012-ST irrespective of the classification of the service. In my considered view, drilling, blasting, digging etc are forming part of construction of pipeline and the same gets covered under the exemption as per Notification No.25/2012-ST dated 20.06.2012 even without applying Sr. No.29(h) of the said notification. Therefore, I do not find any merit in the appeal filed by the department and accordingly the same is rejected.

9. Now coming to the appeal filed by the appellant, the adjudicating authority has confirmed the demand on the ground that the appellant had not produced any evidence to prove that the service provided is exempted. The appellant has produced copies of work order with the appeal memorandum which indicated that the work awarded to the appellant is for drilling and blasting for laying of pipeline for water supply meant for Saurashtra Narmada Avataran Irrigation Yojna ('Sauni Yojna') for Government of Gujarat. Party wise and year wise details of the amount received by the appellant as per the impugned order are as below:

(Amount in Rs.)

Sr. No.	Name of party	2014-15	2015-16	2016-17	Total
1.	Ace Pipeline Contracts Pvt. Ltd	0	0	84391	84391
2.	Akash Construction	0	545896	0	545896
3.	Creator Enterprise	169796	0	0	169796
4.	Digvijay Construction Pvt Ltd	1230470	301168	0	1531638
5.	Earth Technocon P. Ltd	0	3524085	1644400	5168485
6.	Gammon India Ltd	0	0	40381	40381
7.	H.H. Patel Construction	0	0	50000	50000
8.	Karshanji Ranubha Jadeja	0	0	277778	277778
9.	Kiritkumar Sarjudas Vaishnav	0	450000	204500	654500
10.	Krishna Infrastructure	0	2361880	2277639	4639519
11.	Maruti Infra	900000	144687	11210	1055897
12.	Om Technocorn Pvt Ltd	6987082	9533559	0	16520641
13.	Parihram Builders	400000	0	0	400000
14.	Pratham Construction	2960570	0	0	2960570
15.	Pratham EPC Projects Pvt Ltd	0	930410	0	930410
16.	P. S. India Pvt Ltd	542212	0	0	542212
17.	Shaarc Projects Ltd	761975	0	0	761975
18.	Sahdecsinh Pravinsinh Zala	0	0	163870	163870
19.	Shreeji Roadlines & Earth Movers	56470	150000	145000	351470
20.	Shobhagya Pipelines		200000	0	200000
	Unnati Construction	0	12500	0	12500
	Western Mining Company	34000	20000	0	54000
	Others	0	125590	559950	685540




9.1 In respect of Sr. No.1 of above table, the appellant did not submit any documentary evidence.

9.2 In respect of Sr. No.2, the appellant submitted copy of work order awarded to them by M/s Akash Construction and copy of work order awarded to M/s Akash Construction by M/s NCC Ltd. On perusal of the said work order of M/s Akash Construction, it is observed that the same pertained to drilling and blasting at Sauni Yojana Phase-I Line-3 PKG Project, Surendranagar, Gujarat whereas the work order given to M/s Akash Construction by NCC Ltd was for Construction of pipe line consists of earth work excavation. Lowering, laying, joining and testing of M.S Pipeline/Sand bedding including materials, backfilling with excavated materials wherever applicable and disposal of surplus earth etc. Thus it appears that the work carried out by the appellant is in relation to construction of pipeline for water supply and hence the services provided by the appellant is exempted under clause 12(e) read with clause 29(h) of Notification No.25/2012-ST dated 20.06.2012.

9.3 The appellant did not submit any document in respect of Sr.No.3 of the above table.

9.4 The appellant, in respect of Sr.No. 4 of the table, submitted copy of start work order dated 22.11.2013 awarded to M/s Digvijay Construction Pvt Ltd by Executive Engineer, District Road & Building Division, Rajkot for construction of bypass road around Rajkot City joining Rajkot Morbi Road SH24 at Bedi and NH8B at village Maliyasan-Maliyasan Bedi Ring Road (Rajkot Bypass). They have also submitted copy of work order dated 03.11.2014 issued to them by M/s M/s Digvijay Construction Pvt Ltd according to which they were awarded with the work of 'drilling and blasting with material for big and small hole' for the above construction of road. I find that the work related to construction of road is exempted vide Sr.No.13 of Notification No.25/2012-ST which read as under:

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

- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public;*
- (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;*
- (c) a building owned by an entity registered under section 12AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;*
- (d) a pollution control or effluent treatment plant, except located as a part of a factory; or a structure meant for funeral, burial or cremation of deceased;*

9.5 In respect of Sr. No.5 the appellant provided service to M/s Earth Technocon Pvt. Ltd for which they have submitted copy of work order dated 01.06.2015 issued by M/s SPML Infra Ltd to M/s Earth Technocon Pvt Ltd and work order dated 15.05.2015 of M/s Earth Technocon Pvt Ltd issued to the



appellant. As per the work order dated 01.06.2015, M/s SPML Infra Ltd has awarded sub-contract to M/s Earth Technocon Pvt Ltd for 'laying, joining, testing and commissioning Mills Steel pipeline with 3000 mm diameter, 17.5 mm thick from the pipeline work Ch.41.093 to Ch.51.286 (except Ch.45.460 to 45.620) including excavation for pipeline trenches, leveling, sand bedding, hydro testing and refilling with all allied works as may be required for execution of the works under Link2, Package 3, Sauni Project'. As per the said work order, the Gujarat State Irrigation Department has awarded contract for Sauni Yojna Link 2 Package 3 EPC contract for construction of intermediate pumping station to M/s SMPL Infra Ltd. By work order dated 15.05.2015, M/s Earth Technocon Pvt Ltd has awarded work order to the appellant for 'civil drilling and blasting at L2P3 Sauni Yojna 3000 mm dia water pipe line project, Botad, Gujarat. Thus it appears that the work carried out by the appellant is in relation to construction of pipeline for water supply and hence the services provided by the appellant is exempted under clause 12(e) read with clause 29(h) of Notification No.25/2012-ST dated 20.06.2012.

9.6 In respect of Sr. No.6 and 7, the appellant has not submitted any document.

9.7 The appellant submitted copy of work order No.EA962WOD4000031 of M/s Larsen & Toubro Ltd, Construction issued to M/s K.R. Jadeja, Jamnagar and work order dated 25.07.2014 of M/s K.R. Jadeja issued to the appellant in respect of work at Sr. No.8. As per the work order of M/s Larsen & Toubro, work was awarded to M/s K.R. Jadeja for 'construction of 3000 mm dia Twin Pipeline: Charges for excavation in all sorts of soil, viz. soft soil, murrum, hard rock, weathered rock for all depths in accordance with requirements of design, line and level, handling of the excavated material, finishing and leveling the trench, sand bedding, after laying and jointing of pipes etc.'. M/s M.R. Jadeja has awarded the work of 'blasting with material & drilling including obtaining of required permission, in all sorts of soil viz. soft soil, murrum, hard rock, weathered rock for all depths in accordance with requirements of design, line and level, handling of the excavated material, finishing and leveling the trench' to the appellant. Thus, it appears that the work carried out by the appellant is in relation to construction of pipeline for water supply and hence the services provided by the appellant is exempted under clause 12(e) read with clause 29(h) of Notification No.25/2012-ST dated 20.06.2012.

9.8 In respect of Sr. No.9, the appellant submitted copy of work order awarded to them by M/s Kiritkumar Sarjudas Vaishnav (HUF) and copy of work order dated 12.2014 awarded to M/s Kiritkumar Sarjudas Vaishnav (HUF) by M/s N Ltd. On perusal of the said work order of M/s Kiritkumar Sarjudas



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Vaishnav (HUF), it is observed that the same pertained to Blasting of hard rock including cost of explosive for Sauni Yojana Project, Surendranagar, Gujarat whereas the work order given to M/s Kiritkumar Sarjudas Vaishnav (HUF) by NCC Ltd was for Construction of pipe line consists of earth work excavation, lowering, laying, joining and testing of M.S Pipeline/Sand bedding including materials, backfilling with excavated materials wherever applicable and disposal of surplus earth etc. Thus it appears that the work carried out by the appellant is in relation to construction of pipeline for water supply and hence the services provided by the appellant is exempted under clause 12(e) read with clause 29(h) of Notification No.25/2012-ST dated 20.06.2012.

9.9 In respect of Sr. No.10 the appellant provided service to M/s Krishna Infrastructure for which they have submitted copy of work order dated 01.06.2015 issued by M/s SPML Infra Ltd to M/s Krishna Infrastructure and work order dated 27.06.2015 of M/s Krishna Infrastructure issued to the appellant. As per the work order dated 01.06.2015, M/s SPML Infra Ltd has awarded sub-contract to M/s Krishna Infrastructure for 'laying, joining, testing and commissioning Mils Steel pipeline with 3000 mm diameter, 17.5 mm thick from the pipeline work Ch.41.093 to Ch.51.286 (including hill portion) including excavation for pipeline trenches, leveling, sand bedding, hydro testing and refilling with all allied works as may be required for execution of the works under Link2, Package 3, Sauni Project'. As per the said work order, the Gujarat State Irrigation Department has awarded contract for Sauni Yojna Link 2 Package 3 EPC contract for construction of intermediate pumping station to M/s SMPL Infra Ltd. In turn, by work order dated 27.06.2015, M/s Krishna Infrastructure has awarded work order to the appellant for 'Drilling & Blasting in their SMPL-Botad (Bhimdad) site for all type of soil. Thus it appears that the work carried out by the appellant is in relation to construction of pipeline for water supply and hence the services provided by the appellant is exempted under clause 12(e) read with clause 29(h) of Notification No.25/2012-ST dated 20.06.2012.

9.10 In respect of Sr. No.11, the appellant submitted copy of work order awarded to them by M/s Maruti Infra and copy of work order dated 04.03.2015 awarded to M/s Maruti Infra by M/s NCC Ltd. On perusal of the said work order of M/s Maruti Infra, it is observed that the same pertained to 'Drilling and blasting at Sauni Yojana at 3000 mm dia water pipeline whereas the work order given to M/s Maruti Infra by NCC Ltd was for Construction of pipe line consists of earth work excavation, lowering, laying, joining and testing of M.S Pipeline/Sand bedding including materials, backfilling with excavated materials wherever applicable and disposal of surplus earth etc. Thus it appears that the work carried out by the appellant is in relation to construction of pipeline for water supply and hence the services provided by the appellant is exempted under



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clause 12(e) read with clause 29(h) of Notification No.25/2012-ST dated 20.06.2012.

9.11 In respect of Sr. No.12 the appellant provided service to M/s Om Technocon Pvt. Ltd for which they have submitted copy of work order dated 03.09.2014 issued by M/s SPML Infra Ltd to M/s Om Technocon Pvt Ltd and work order dated 13.10.2014 of M/s Om Technocon Pvt Ltd issued to the appellant. As per the work order dated 03.09.2014, M/s SPML Infra Ltd has awarded sub-contract to M/s Om Technocon Pvt Ltd for 'laying, joining, testing and commissioning Mild Steel pipeline with 3000 mm diameter, 17.5 mm thick from the Pumping Station to Ch.51.286 near Bhimdad Reservoir (Total 2m km length i.e. two lines liad parallel each of 10 km length) including excavation for pipeline trenches, leveling, sand bedding, hydro testing and refilling with all allied works as may be required for execution of the works under Link2, Package 3, Sauni Project'. As per the said work order, the Gujarat State Irrigation Department has awarded contract for Sauni Yojna Link 2 Package 3 EPC contract for construction of intermediate pumping station to M/s SMPL Infra Ltd. By work order dated 13.10.2014, M/s Om Technocon Pvt Ltd has awarded work order to the appellant for 'civil drilling and blasting at saunipariyojana at 3000 mm dia water pipeline project, Botad'. Thus it appears that the work carried out by the appellant is in relation to construction of pipeline for water supply and hence the services provided by the appellant is exempted under clause 12(e) read with clause 29(h) of Notification No.25/2012-ST dated 20.06.2012.

9.12 The appellant has not submitted any documents in respect of work mentioned at Sr.No.13 of the above table.

9.13 In respect of Sr.No.14 and, the appellant submitted copy of work order dated 22.12.2014 of M/s GVPR Engineers Ltd awarded to M/s Pratham Construction, which subsequently known as Pratham EPC Project Pvt Ltd, and copy of work order dated 04.09.2014 awarded to them by M/s Pratham Construction. On perusal of the said work order of M/s Pratham Construction, it is observed that the same pertained to Drilling (4"Dia and blasting work in all depth in hard rock for their site at L2P2 Project Rajpur (Gujarat) whereas the work order given to M/s Pratham Construction by M/s GVPR Engineers Ltd was for formation of approach road, unloading, excavation, lowering, laying, joining and testing and back filling, testing and commissioning of M.S Pipes of 12 mtrs length. Thus it appears that the work carried out by the appellant is in relation to construction of pipeline for water supply and hence the services provided by the appellant is exempted under clause 12(e) read with clause 29(h) of Notification No.25/2012-ST dated 20.06.2012.

14 The appellant did not submit any document in respect of Sr.No.16 to 17.



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9.15 In respect of the service provided to the party mentioned at Sr.No.18, I find that the income is from Drilling & Blasting of the work related to construction of pipeline. As per the 26AS as the TDS is deducted under Section 194C of the Income Tax Act, 1962. As such the said income is exempted from service tax under clause 12(e) read with clause 29(h) of Notification No.25/2012-ST dated 20.06.2012.

9.16 In respect of the service provided to the parties mentioned at Sr. No.19 to 23, the appellant has not submitted any document,

10.1 In view of the above findings, the liability of the appellant is required to be reduced on the following value of services.

Sr. #	Name of party	2014-15	2015-16	2016-17	Remarks
2.	Akash Construction	0	545896	0	Exempted being Construction of pipeline.
4.	Digvijay Construction Pvt Ltd	1230470	301168	0	Exempted being Construction of road.
5.	Earth Technocon P. Ltd	0	3524085	1644400	Exempted being Construction of pipeline.
8.	Karshanji Ranubha Jadeja	0	0	277778	Exempted being Construction of pipeline.
9.	Kiritkumar Sarjudas Vaishnav (HUF)	0	450000	204500	Exempted being Construction of pipeline.
10.	Krishna Infrastructure	0	2361880	2277639	Exempted being Construction of pipeline.
11	Maruti Infra	900000	144687	11210	Exempted being Construction of pipeline.
12	Om Technocorn Pvt Ltd	6987082	9533559	0	Exempted being Construction of pipeline.
14.	Pratham Construction	2960570	0	0	Exempted being Construction of pipeline.
15.	Pratham EPC Projects Pvt Ltd	0	930410	0	-do-
18.	Sahdevsingh Pravingsinh Zala	0	0	163870	--do-
	Total	12078122	17791685	4579397	

10.2 Accordingly, the value of taxable service on which service tax to be paid by the appellant is required to be reduced to the extent of Rs.1,20,78,122/- in the year 2014-15, Rs.1,68,61,275/- in the year 2015-16 and Rs.44,15,527/- in the year 2016-17. The value of taxable services in the SCN and Order-in-Original, has taken as per the amount of income shown in the profit and loss account. For the year 2014-15 the profit and loss account has shown an income of Rs.3,02,84,449/- and accordingly, after deducting the value of exempted service of Rs.1,97,88,864/- the value of taxable service as per the order-in-original is arrived at Rs.1,04,95,585/- . However, on perusal of the ledger account submitted by the appellant, the actual income for the year was Rs.3,38,31,439/-



[Handwritten signature]

Thus the income shown in the show cause notice and profit and loss account is lower than actual income. Hence the value of exempted income determined in this order is more than the value of taxable income shown in the order-in-original. As such, the liability of the appellant to pay service tax for the year 2014-15 reduced to zero. The value of taxable service of the appellant for the year 2015-16 and 2016-17 is as under:

	2014-15	2015-16	2016-17
Value as per order	10495585	18299775	5459119
Exempted as per the above findings	12078122	17791685	4579397
Value of Taxable service	--	508090	879722

Since the value of taxable service is less than the threshold of ten lakhs, the appellant is eligible for exemption as per Notification No.33/2012-ST, in the year 2015-16 and 2016-17. As such, there is no liability on the appellant to pay service tax for the entire period for which show cause notice issued. Consequently, the penalties imposed on the appellant became unsustainable.

11. In view of above, I set aside the impugned order and allow the appeal with consequent relief, if any.

१३. अपीलकर्ताओ द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

13. The appeals filed by the Appellant and department are disposed off as above.

सत्यापित / Attested

Superintendent
Central GST (Appeals)
Rajkot

By R.P.A.D.

(शिव प्रताप सिंह/ SHIV PRATAP SINGH)
आयुक्त (अपील)/Commissioner (Appeals)

सेवा में मेस्सेर्स जीवराज भाई बालुभाई चौधरी प्रो। न्यू बालाजी ड्रिलिंग & ब्लास्टिंग कांटेक्टर मोटी खोडियार मंदिर, वांकानेर रोड थानगढ़-363 530, सुरेन्द्रनगर जिल्ला	To Jivrajbhai Balubhai Choudhary, Prop. New Balaji Drilling & Blasting Contractor, Opp. Moti Khodiyar Mandir, Wankaner Road, Thangadh-363 530, Dist. Surendranagar
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प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद।
- 2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट।
- 3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल राजकोट-II।
- 4) गार्ड फाइल।



