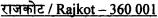


: : आयुक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्क:: O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

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



Tele Fax No. 0281 – 2477952/2441142Email: commrappl3-cexamd@nic.in



रजिस्टर्डडाकए.डी. द्वारा :-

DIN-20230264SX000000C585

क् अपील / फाइलसंख्या/ Appeal /File No.

GAPPL/COM/STD/74/2022

मूलवादेशसं / OIO No.

Di

दिनांक/ Date

AC/JAM-I/ST/38/2021-22

07-03-2022

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

RAJ-EXCUS-000-APP-055-2023

आदेश का दिनांक /

24.02.2023

जारी करने की तारीख /

Date of issue:

27.02.2023

Date of Order:

श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /

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

rassed by sari salv rratap singh, Commissioner (Appeals), Rajkot.

ण अपर आयुक्त / संयुक्त आयुंक्त / उपायुक्त / सहायंक आयुक्त , केन्द्रीय उत्पाद शुल्क / सेवाकर /वस्तु एवंसेवाकर , 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 :

न व्यपीलकर्ता&प्रतिवादी का नाम एवं पता /Name & Address of the Appellant & Respondent: :-

M/s. Bajarang Enterprise, Khodiyar Krupa, Village-Mithoi, Tal-Lalpur, Dist-Jamnagar.

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 निम्नलिखि+त 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॰ पुरेम, 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 अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, ,द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- ३८००१६को की जानी चाहिए।/

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

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग , ज्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम 5 लाख रुपए था 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक हैं तो कमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भूगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रिजस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक द्वारा किया जाना चाहिए। संबंधित इपट का भूगतान, 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 stay shall be accompanied by a fee of Rs. 500/-.

अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम,1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र 8.T.-5में 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 मौंग , ब्याज की मौंग 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 क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुक्क की प्रति संलग्न करें। निर्धारित शुक्क का मुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रिजस्टार के नाम से किसी भी सार्वीजनक 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 शुक्क 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 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/-.

अस्ति अमिल्ल अस्ति स्ति अमिल्ल अस्ति स्ति अस्ति अस्ति अस्ति स्ति अस्ति अस्

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- वित्त अधिनियम,1994की 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 प्रपन्न S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुक्ल अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुक्ल द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुक्ल / सेवाकर, को अपीलीय न्यायिकरण को आवेवन दर्ज करने का निर्देश दे 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 For 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. (i)
- सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35 एफ 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, बशते के इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राभि दस करोड़ रुपए से अधिक न हो।

 केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" मे निम्न शामिल है

 (i) धारा 11 को के अंतर्गत रकम

 (ii) सेनवेट जमा की ली गई गलत राशि

 (iii) सेनवेट जमा की ली गई गलत राशि

 (iii) सेनवेट जमा की ली स्वस्थात के प्रवस्थात विवीस (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीत (ii)

(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

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं॰ 2) अधिनियम.2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान अज़ी एवं अपील को लागू नहीं होगे।/
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.

- भारत सरकार कोपूनरीक्षण वाबेदन :
 Revision application to Government of India:
 इस आदेश की पूनरीक्षण वाबेदन के अंतर्गतअवर 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: (C)
- यदि माल के किसी नुक्सान 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 मंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुक्सान 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 (i)
- 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 छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India. (ii)
- यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान की माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty. (iii)
- सुनिश्चित उत्पाद के उत्पादन शुल्क के भगतान के लिए जो ड्यूटी केडीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (न॰ 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. (iv)
- 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 प्रतिया 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 (v) ही केदाव उत्पाद शुल्क आवात्त्रम, 1944 ना बारा 35 22 विकास करिए। / 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 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. (vi)
- 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 पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केदीय 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, notwith standing 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. (D)
- 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. (E)
- सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सिम्मिलित 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. (F)
- 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 (G)



अपील आदेश /ORDER-IN-APPEAL

Appeal has been filed by Assistant Commissioner, CGST Division-I, Jamnagar (hereinafter referred to as the 'Revenue') against Order-in-Original No. AC/JAM-I/ST/38/2021-22 dated 07.03.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner; Central Excise & CGST, Division-I, Jamnagar (hereinafter referred to as 'sanctioning authority') in favour of M/s Bajrang Enterprise, Khodiyar Krupa, Village-Mithoi, Tal-Lalpur, Dist. Jamnagar (hereinafter referred to as the 'respondent')

- 2. Briefly stated the facts of the case are that on the basis of income data received from the Income Tax department for 2016-17, it was revealed that the respondent had earned income of Rs.1,26,19,245/- towards consideration for providing services. It appeared that the respondent had not obtained service tax registration and did not pay any service tax and also did not file service tax returns as provided in the Service Tax law. Therefore a show cause notice was issued demanding service tax of Rs.18,92,887/-. The adjudicating authority observed that the respondent provided service of Agricultural activities and hence the service is covered under negative list of services under Section 66(D)(d) of Finance Act, 1994. The adjudicating authority, therefore, dropped the proceedings vide the impugned order.
- 3. Being aggrieved, the 'Revenue' has filed the present appeal on the ground that as per copy of work orders issued by M/s Essar Agrotech Ltd it transpired that they have no relation to agriculture activities. In the description column of work orders, the activities were mentioned as 'laying of grass, spraying of fertilizer at New Township etc.'. In light of the documents produced by the respondent, the adjudicating authority ought to have appreciated that the services rendered were not relating to agriculture or agricultural operations directly related to production of any agricultural produce and did not include cultivation, harvesting, threshing, plant protection or testing and hence did not quality for exemption as per Section 66D(d)(i).
- 4. Advocate P.D. Rachch appeared for personal hearing and handed over a copy of cross objections said to have been submitted by the respondent earlier which were not available on record and have been taken on record now at the time of personal hearing. He submitted a set of documents to clarify definition of agriculture as provided under Section 66D of Finance Act, 1994 and the CBEC Educational Guide. He also submitted a copy of CESTAT decision in case of Murlidhar Horticulture Put Ltd wherein services relating to laying of lawn and its appreciate are held to be of agricultural nature. In view of this he requested

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uphold the Order-in-Original and dismiss the departmental appeal.

- 5. In the cross objection filed, the respondent submitted that they have provided agriculture activities like laying of grass, spraying of fertilizer which is covered under negative list as defined under clause (d)(i) of Section 66D of the Finance Act, 1994. They contended that if the above said service is not considered as agriculture activity, it is required to be considered/covered under the horticulture activity which is included in the agriculture activities as defined under Para 4.4.2 of Education Guide dated 20.06.2012 issued by CBEC. The respondent also relied in the case of Murlidhar Horticulture Pvt Ltd-2019(27)GSTL.377 (Tri-Ahmd).
- 6. I have carefully gone through the facts of the case, the impugned order, grounds of appeal in the appeal memorandum and the submissions of the respondent. The point to be decided in the present appeal is whether the impugned order by which adjudicating authority dropped the demand is proper and legal. The adjudicating authority, in his order, observed that the services provided by the respondent are in relation to agriculture and covered under negative list of services under Section 66(D)(d)(i). The department, in the present appeal, contended that the services rendered were not relating to agriculture or agricultural operations directly related to production of any agricultural produce and did not include cultivation, harvesting, threshing, plant protection or testing and hence did not quality for exemption as per Section 66D(d)(i). Thus the dispute is whether the activity carried out by the respondent is activity related to 'agriculture' or not.
- 7. The definition of 'agriculture' as defined under Section 65B(3) reads as under:
 - "(3) "Agriculture" means the cultivation of plants and rearing of all life-forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products; "

From the plain reading of the above definition, it can be understood that agriculture is cultivation of plants and rearing of animals for food, fibers, fuel, raw material and other similar products. **Agriculture** encompasses crop and livestock production, aquaculture, fisheries and forestry for food and non-food products. In the present case, admittedly, the service provided by the respondent was not in relation to cultivation of plants for food, fibers, fuel or raw materials. Thus, prima facie, it appears that the service provided by the respondent is not falling under the definition of 'agriculture'. However, the respondent contended that their service is alternatively falling under 'horticulture' which, according to the Education Guide published by CBEC, is an activity of 'agriculture'. Paragraph 4.4.1 and 4.4.2 of Education Guide are as under:



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"4.4.1 What is the meaning of 'agriculture'?

'Agriculture' has been defined in the Act as cultivation of plants and rearing or breeding of animals and other species of life forms for foods, fibre; fuel, raw materials or other similar products but does not include rearing of horses.

4.4.2 Are activities like breeding of fish (pisciculture), rearing of silk worms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture, forestry included in the definition of agriculture?

Yes. These activities are included in the definition of agriculture."

- 8. Thus, as per the Education Guide, 'horticulture' is included in definition of 'agriculture'. Now the question arises is whether the activities carried out by the respondent like laying of grass and spraying of fertilizer etc are to be considered as 'horticulture' or not. At this juncture, the respondent relied upon the case *Murlidhar Horticulture Pvt Ltd-2019 (27) GSTL.377 (Tri-Ahmd)* where similar activities were under the consideration of Hon'ble Tribunal and it was held as under:
 - "6. Coming to the period 1-7-2012 we find that Section 66D(d) of the Finance Act states as under:
 - '66D. Negative list of services:- The negative list shall comprise of the following services, namely:-
 - (d) Services relating to agriculture or agricultural produce by way of -
 - (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;
 - (ii) Supply of farm labour;
 - (iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
 - (iv) Renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
 - (v) Loading, unloading, packing, storage or warehousing of agricultural produce;
 - (vi) Agricultural extension services;
 - (vii) Services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce, "

The word Agriculture has been defined in Section 65B(3) of the Finance Act, 1994 as - "Agriculture" means the cultivation of plants and rearing of all life forms of animal, except the rearing of horses, for food, fiber, fuel, raw material or other similar products. Section 66D(d) exempts the services related to production of any agriculture produce including cultivation, harvesting, threshing plant protection. Thus the cultivation of plants and its protection is also included in Agriculture. The term "Horticulture" means to provide for plant conservation, landscape restoration, landscape and garden designing, maintenance etc. The Horticulture is part of agriculture and has been defined in various dictionary and law lexicon as under:

• Mitra's Legal and Commercial Dictionary, 6th edition:

"Horticulture: The science and art of growing fruits, vegetables, flowers or ornamentals plants; that department of the science of agriculture which relates to the cultivation of gardens or orchards, including the growing of vegetables, fruits, flowers and ornamental shrubs, and trees,."

• The New Shorter Oxford English Dictionary on Historical Principles, Volume 1:

"Horticulture: The art of garden cultivation or management."

Bloomsbury English Dictionary, New Edition:

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"Horticulture: The cultivation of a garden, orchard or nursery; the cultivation of flowers, fruits, vegetables, or ornamental flowers.

The science and art of cultivating such plants."

- Capital's: Legal Dictionary, Volume 1:
 - "Horticulture: The science and art of growing fruits, vegetables, flowers, or ornamental plants."
- The Encyclopedic Law Lexicon, Volume 2 by Justice CK Thakker:

"Horticulture: Horticulture means the art of gardening."

• The Random house Kernerman Webster's college Dictionary:

"Horticulture: The science or art of cultivating flowers, fruits, vegetables or ornamental plants, esp. in a garden, orchard, or nursery."

Thus the term "agriculture" is of wide compass and it covers horticulture which in turn cover the gardening also. In case of Puran Singh M. Verma v. CIT the Hon'ble Gujarat High Court while interpreting the term "agriculture income" has held that if the basic operation such as cultivation of land weeding, watering, manuring etc. are undertaken, the same would qualify under the term "agriculture". In our view looking to the nature of activity performed by respondent as described above since they have undertaken such operations hence their activity would fall under the definition of "Horticulture". In case of Kasturi (Dead) by Lrs v. Gaon Sabha - (1989) 4 SCC 45, the Hon'ble Apex Court has held that - "The definition of land in the Act is wide and in paragraph 4(d) the admitted position is "fuelwood" was being grown on the property. "Horticulture", 'Garden' and 'Groveland' in the absence of statutory definition, would have the common parlance meaning. 'Horticulture' means 'the cultivation of garden'. 'Garden' means "an area of land, usually planted with grass, trees, flower beds, etc. an area of land used for the cultivation of ornamental plants, herbs, fruit, vegetables, trees, etc."

- 7. In our view therefore such activities undertaken by the respondent would not fall under the definition of 'management, maintenance or repair service'. The appellant Revenue has relied upon the Tribunal decision in case of Tarachand Chaudhary - 2016 (42) S.T.R. 83 (Tri.), Suresh Jaiswal - <u>2016 (42) S.T.R. 97</u> (Tri.) and Chotelal Virendra Kumar - <u>2016 (41)</u> S.T.R. 296 (Tri.). However, we find that the said judgments are not applicable to the present case as the facts are different. In those cases the assessees had been appointed for management and maintenance of parks and roadside plantation whereas in the present case the nature of activity is different. In the said cases the Jaipur Development Authority had given the composite contract which also included non-agricultural activity for maintaining Public Park which is not the case here. Whereas, in the instant case it is neither a Public Park nor for recreational activity. The horticultural activities were undertaken at non-public area and are industrial in nature. Even as per the C.B.E. & C. Guide Para 4.4.2 the activity of Horticulture are covered under the term agriculture. Further the C.B.E. & C. Guide even if assumed it is for educational purpose cannot be brushed aside on this ground. The said guide once classified the service to be exempted cannot be made irrelevant. The Hon'ble Calcutta High Court in case of Sheikh Hidayat Ali v. Kumar Kalanand Singh - 1913 (17) CLJ 411 has interpreted 'Horticulture' to mean - 'Here again, it must be pointed out horticulture means the cultivation of garden or the science of cultivating, or managing garden, including growing of flowers, fruits and vegetable'.
- 8. In view of above discussion and findings we thus hold that the activity undertaken by the respondent since falling under the definition of 'Horticulture' which is part of agricultural activity only and not liable for any service tax. We therefore hold that the respondent is not liable for payment of service tax on activity undertaken by them. We also find that the demands were raised by invoking extended period. However in the present case the issue involved is of interpretation. It is coupled with fact that even as per the C.B.E. & C. Guide the service tax was not payable. Also the Tribunal judgment on similar issue was in assessee's favour. The Revenue has not adduced any evidence that there was deliberate intention for non-payment of service tax by the respondent and the demands made by invoking extended period are not sustainable on time bar ground also.
- 9. In view of our above findings, we thus hold that the respondent is not liable for tax and we therefore, uphold the impugned order and dismiss the appeal filed by the Revenue."
- 9. I find that, Hon'ble Tribunal in the above mentioned order had considered



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the work relating to cleaning of garden and removal of leaves and unwanted vegetation, application of farm yard manure, application of fertilizers, edging of lawn, flower beds and weeding regularly, plant protection by using suitable insecticides and pesticides, pruning of trees when required. In the present case, the respondent was doing the activities like laying of grass and spraying of fertilizer. Thus, works carried out in both cases are almost similar. Therefore, ratio of the above case law is squarely applicable in the present case also. Accordingly, I hold that there is no infirmity in the impugned order and the appeal filed by the revenue is liable for rejection.

- 10. In view of above discussions, I uphold the impugned order and reject the appeal filed by the revenue.
- ११. डिपार्टमेंट द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
- 11. Appeal filed by the Revenue is disposed off as above. सत्यापित / Attested

Superintendent
Central CST (Appeals)

Rajkot

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

By R.P.A.D.

सेवा में,
मेस्सेर्स बजरंग एटरप्राइज
खोडियार कृपा, विल्लेज मिथोई,
तालुका लालपुर, जिल्ला जामनगर।

То

M/s Bajrang Enterprise, Khodiyar Krupa, Village-Mithoi, Tal-Lalpur, Dist. Jamnagar

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) ऊप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, मंडल-॥, जामनगर
- 4) गार्ड फ़ाइल।



