



जिस्ट इंजाकर.डी. द्वारा :-

DIN- 20230564SX00050075B

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / OIO No.	दिनांक Date
	GAPPL/COM/STP/223/2023	18/AC/MR/2020-21	19-03-2023

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

RAJ-EXCUS-000-APP-105-2023

आदेश का दिनांक / Date of Order:	24.04.2023	जारी करने की तारीख / Date of issue:	08.05.2023
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श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals), Rajkot.

ग उपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर,
राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central
Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellant & Respondent :-

**M/s. Kiran Construction, 573, darbar Gadh Road, Naka of Madi
Bhakhijiadiya-2, Tal- Upleta. Rajkot-360490**

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 manner.

(A) सीमा शुल्क / केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 86 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) शीर्षक मूल्यांकन से सम्बंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं. 2, आर.के. पुरम, नई दिल्ली, की जा सकती है। /

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 (सिस्टट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 की जा सकती है। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhuvanah 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 की गयी 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 जमा 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/- 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 up to Rs. 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 5 के अंतर्गत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी है, उसको प्रति साथ में संलग्न करना चाहिए। इनमें 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 जमा 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/- 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 fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five 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/-.



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.

(1) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1994 की धारा 35एके 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, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

- (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

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान अर्जी एवं अपील को लागू नहीं होगी।

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 be 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.

(2) भारत सरकार को पुनरीक्षण आवेदन :

Revision application to Government of India:

इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, की 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:

(3) 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 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

(4) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनियमन 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 an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(5) 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.

(6) 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 आदेशों जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायाचिधि 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.

(7) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील)नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(8) 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.

(9) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथासंभव 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 filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(10) 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.

(11) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित 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.

(12) 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 ::

M/s Kiran Construction, 573, Darbar Gadh Road, Naka of Medi Khakhijalia, Taluka-Upleta, Rajkot-360 490 (hereinafter referred to as appellant) has filed appeal No. GAPL/COM/STP/223/2023 against Order-in-Original No.18/AC/MR/2021-22 dated 22.02.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST, Division-I, Rajkot (hereinafter referred to as 'adjudicating authority').

2.1 Facts of the case, in brief, are that during the Investigation / inquiry, the appellant appeared to have collected the Service Tax from the Service Recipients but not deposited the same into Government Exchequer during the period 2013-14 to 2016-17 and also not filed any ST-3 returns for the same period from April-2013 to Dec-2016. Therefore, a show cause notice for the period 2013-14 to 2016-17 (Upto December-2016) dated 18.10.2018 was issued to the appellant demanding service tax of Rs.35,61,223/- . The appellant has taken the benefit of Sabka Vishwas (Legal Dispute Resolution) Scheme, 2019 (SVLDR, 2019) and paid the required amount of Rs. 8,38,367/- against the amount demanded in the show cause notice and SVLDR-4 in this regard was issued to the Appellant.

2.2 Due to non-submission of data by the appellant for the subsequent period i.e. up to 30.6.2017, on the basis of best judgment in view of Section 72 of Finance Act, 1994 was applied. On the basis of the earlier show cause notice dated 18.10.18, nonpayment of Service Tax for the F.Y. 2013-14 to 2017-18 (Up to June-2017) taxable value for the period 2013-14 to 2017-18 (Up to June-2017) was redetermined. Hence, further show cause notice dated 19.03.2021 covering the period 2013-14 to 2017-18 (Up to June-2017) was issued to the appellant demanding service tax Rs. 6,88,546/- under Section 73(1) along with the interest under Section 75 and proposing penalties under Sections 77, 76 and 78 of the Finance Act, 1994. The adjudicating authority, by the impugned order, confirmed the demand of Rs.6,88,546/- along with interest under Section 75 of the Finance Act 1994 and imposed penalty of Rs.6,88,546/- under Section 78 of the Finance Act 1994. He also imposed penalties of Rs.10,000/- under Section 77 and Rs.20,000/- under Section 70 of the Finance Act, 1994.

3.1 Being aggrieved, the appellant filed the present appeals wherein they, inter alia, contended that Appellant was engaged in providing services of Works Contract Services, Erection, Commissioning and Installation and construction services other than residential services. The appellant contended that he has not received the copy of the Show Cause Notice and impugned order dated 15,12,2022. The appellant provided the Works Contract Services of the original work. He contended that as per Notification No. 11/2014-ST dated 11.07.2014, the Service Tax to be paid on 40 % of the Value of the total amount charged. So, Value of Service Tax would be Rs. 18,36,122/- (40% of Rs. 45,90,304/) and amount of Service Tax @15% on Rs. 18,36,122/- would be Rs. 2,75,418/- He further submitted that he has to pay 50% of Service Tax in view of Notification No. 30/2012-ST dated 20.06.2012. So, Service Tax liability would be Rs. 1,37,708/-.

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3.2 The appellant further contended that the value arrived for demand of service tax by resorting to Section 72 of the Finance Act, 1994 is in gross violation of the mandate and procedures mentioned in Section 72 itself. They relied upon the following case laws:

- a) Creative Travel Pvt. Ltd.-2016 (46) S.T.R. 33 (Del.)
- b) Carlsberg India Pvt. Ltd. -2016 (43) S.T.R. 55 (Tri.-Del.)
- c) Coco Cola (I) Pvt. Ltd.-2015 (40) S.T.R. 547 (Tri.-Del.)
- d) N.B.C. Corporation Ltd. (33) S.T.R. 112 (Del.)

3.3 The appellant submitted that the adjudicating authority had ignored the instruction issued by the Board and without verifying the facts and acting against the spirit and direction of the instruction issued by the Board had issued the impugned order. He had mentioned such facts and taken such grounds which was never a part of the show cause notice. Appellant submitted that there is an established principle that the facts and allegations which have not been mentioned in the show cause notice should not be a part of the order. They relied upon the following case laws:

- a) Huhtamaki PPI Ltd-2021 (50) GSTL.309 (Tri-Ahmd)
- b) Ramadas-2021 (44) GSTL.258 (Mad)
- c) Mackintosh Burn Ltd-2020 (35) GSTL.409 (Tri-Kol)
- d) Swpne Nagari Holiday Resort-2019 (21) GSTL.559 (Tri-Mum)

3.4 The appellant submitted that the show cause notice and consequential order was issued on the basis of information and details filed by the appellant with Income Tax department and there was no suppression at all and as such the show cause notice was time barred. They relied upon the following case laws:

- a) Oriental Insurance Co Ltd-2021-TIOL-307-CESTAT-DEL
- b) Backstone Polymers-2014 (301) ELT.657 (Tri-Del)
- c) Kirloskar Oil Engines Ltd-2004 (178) ELT.998 (Tri-Mumbai)
- d) Hindalco Industries Ltd-2003 (161) ELT.346 (Tri-Del)

3.5 The appellant further contended that in the case of interpretation of law, no penalty is imposable considering several judgments of the Tribunal and High Courts. They contended that the matter of penalty is governed by the principles as laid down by the Hon'ble Supreme Court in the case of Hindustan Steel Ltd-1978 ELT (J159) wherein it is held that penalty should not be imposed merely because it was lawful to do so.

4.1 Shri R. C. Prasad, consultant appeared for personal hearing held on 23.03.2023 and submitted that as explained in the additional submissions handed over at the time of personal hearing, the appellant provided Works Contract services to SEZ which is an exempted service. Therefore, he requested to set aside the OIO.

4.2 In the further submission, appellant contended that he is engaged in providing services of Works contract within SEZ of M/s Reliance India Limited. M/s Reliance Industries Limited was a Unit of Reliance Jamnagar SEZ and it had awarded a works contract to the appellant.

4.3 As regards service of the Order-in-original, it is submitted that the impugned order was handed over to the appellant only on 15.12.2022, when he was called to collect a letter for payment of Government dues. It may be seen that the both the letter for recovery and the copy of the impugned order are office copies (O/c), which proves



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that the original copy of the order was not served to the appellant. Further, in the office copy, generally the dispatch number is written, whereas there is no such dispatch number in the office copy and signatures of all the other officers, to whom the copy has been marked are there.

4.4 Appellant further stated that as per Section 37C of the Central Excise Act, 1994 made applicable to Service Tax vide Section 84 of the Finance Act, 1994- Section 37 C which is reproduced hereunder.

Section 37C. Service of decisions, orders, summons, etc. -

(1) Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served, -

(a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due or by speed post with proof of delivery or by courier approved by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)] to the person for whom it is intended or his authorised agent, if any;

(b) if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case maybe, is intended;

(c) if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice board of the officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post [or courier referred to in sub-section (1)] or a copy thereof is affixed in the manner provided in sub-section (1).]

4.5 Appellant submitted that Section 37 C as cited above mandates that if the order was sent through registered post or Speed Post there should be a proof of delivery and the appellant had approached the officials concerned for providing proof of delivery, but they failed to provide or show. It is submitted that proof of dispatch, if any, cannot take place of the proof of delivery and both are totally different and not interchangeable. Further in Section 37 (C) (2), it is specifically mentioned that the order shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post, for which there is no proof or evidence. It appears that either the respondent department failed to serve it to the appellant or the postal department delivered the document to some other person but not the appellant. It is submitted that any order is to be served to whom it is intended or his authorized agent, if any. If the department fail to serve in that manner, then the other options may be exercised, if it cannot be served to the intended person; that now, it is on record that the said order has not been served to the appellant, the intended person, in the present case and such it cannot be termed as a proper delivery in terms of Section 37 of Central



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Excise Act, 1994 *ibid*. It is also submitted that as per Section 37 C of Central Excise Act 5 made applicable to Service Tax if for any reasons any decision or order cannot be served to the person through registered post then the next option is to affix a copy of the order to some conspicuous part of place of business of the intended person. It may be seen that this was not done. In view of the above facts, it is submitted that the impugned order was received by the appellant only on 15.12.2022 by hand delivery.

4.6 The appellant further submitted that Section 37 C as cited above mandates that if the order was sent through registered post or Speed Post there should be a proof of delivery and the appellant had approached the officials concerned for providing proof of delivery, but they failed to provide or show. It is submitted that proof of dispatch, if any, cannot take place of the proof of delivery and both are totally different and not interchangeable. Further in Section 37 (C) (2), it is specifically mentioned that the order shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post, for which there is no proof or evidence. It appears that either the respondent department failed to serve it to the appellant or the postal department delivered the document to some other person but not the appellant. It is submitted that any order is to be served to whom it is intended or his authorized agent, if any. If the department fail to serve in that manner then the other options may be exercised, if it cannot be served to the intended person; that now, it is on record that the said order has not been served to the appellant, the intended person, in the present case and such it cannot be termed as a proper delivery in terms of Section 37 of Central Excise Act, 1994 *ibid*. It is also submitted that as per Section 37 C of Central Excise Act 5 made applicable to Service Tax if for any reasons any decision or order cannot be served to the person through registered post then the next option is to affix a copy of the order to some conspicuous part of place of business of the intended person. It may be seen that this was not done. In view of the above facts, it is submitted that the impugned order was received by the appellant only on 15.12.2022 by hand delivery.

4.7 Appellant relies upon the judgment of Hon'ble Supreme Court in the case of Shri Suni Kumar Sambhudayal Gupta (Dr.) v/s. state of Maharashtra, reported as (2010) 13 SCC 657, in which it has been held that:

"54. In (1989) 2CC 602, Gujarat Electricity Board v. Atmaram Sungomal Poshani, this Court examined the issue regarding the presumption of service of letter sent by registered post under section 27 of the General Clause Act, 1897 and held as under : (SCC pp. 611-12, Para 8) "8. There is presumption of service of a letter sent under registered cover.... No doubt the presumption is rebuttable and it is open to the party concerned to place evidence before the court to rebut the presumption by the showing that the address mentioned on the cover was incorrect or that the postal authorities never tendered the registered letter to him.... The burden to rebut the presumption lies on the party, challenging the factum of service." (emphasis added) A similar view has been reiterated by this court in (1996) 7CC 275, CIT v. V.K Gujarat and (1997) 2 CC 637, Shimla Development Authority v. Santosh Sharma.

4.8 Appellant submits that service by post is covered by Section 27 of General Clauses Act, 1897: Section 27 of The General Clauses Act, 1897 27. Meaning of service



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by post- —Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression “serve” or either of the expressions “give” or “send” or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

4.9 It may be seen that the evidence for delivery of the impugned order has been countered by the appellant and as such contrary is proved that no delivery was made. Appellant relies upon following orders in support of its contentions:

- a) SHREE BALAJI MARKETING Versus COMMISSIONER OF C. EX., RAIPUR2019 (21) G.S.T.L. 501 (Tri. - Del.)
- b) COMMISSIONER OF CUS., C. EX. & S.T., NASHIK-II Versus GADE TRANSPORT-2018 (18) G.S.T.L. 584 (Bom.)
- c) REGENT OVERSEAS PVT. LTD. Versus UNION OF INDIA-2017 (6) G.S.T.L. 15 (Guj.)

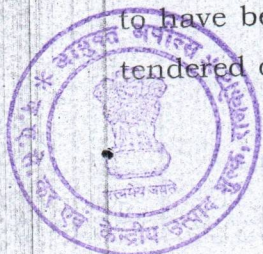
In view of the above, appellant pray that appeal filed by him may be allowed.

5. I have carefully gone through the facts of the case, the impugned order, the appeal memorandum and written as well as oral submissions made by the Appellants and further submission submitted at the time of personal hearing. The issue to be decided in this case is whether the impugned order, in the facts and circumstances of the case, confirming the demand against the appellant and imposing penalty is legal and proper or otherwise.

6. It is observed that the show cause notice in the present case was issued on the basis investigation/ inquiry. The adjudicating authority on the basis of the earlier show cause notice and considering the best judgment in view of Section 72 of finance Act, 1994 confirmed the demand in respect of the works contract services.

7.1. Before going to the merits of the case, let me examine whether the appeal is filed within time or otherwise as the date of issue of order was 19.03.2021 and the date of filing appeal is 02.01.2023. The appellant submitted that they came to know about issuing of notice and order only when they received letter dated 15.12.2022 for recovery of amount arising out of the impugned order. In this connection, I find that the copy of appeal filed was forwarded to the adjudicating authority vide this office letter dated 24.03.2023 for offering comments and specifically asking for date of service of the order. However, as no comments or any objection regarding the date of filing of appeal was received instead they simply forwarded the copy of the dispatch of the impugned order by speed post. It is observed that nothing on the record which shows that the copy of the said Order-in-Original has been served to the appellant which was dispatched on 22.03.2021 or 15.12.2022. I find that Section 37(C)(2) of the Central Excise Act, 1944 applicable to Finance Act, 1944 which states that Every decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post. In the present case, the date of dispatch is 19.03.2021

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which is not the date of delivery of the impugned order. I further find that case laws cited by the appellant are squarely applicable in the present appeal. The crux of the case laws is that if evidence for delivery of the impugned order has been countered by the appellant and as such contrary is proved that no delivery was made.

7.2 Therefore, I consider the date of serving of impugned order in the present case is 15.12.2022 not the date of dispatch of said order i.e. 19.03.2021 and hold that the present appeal dated 02.01.2023 is filed within stipulated time under Section 85 of the Finance Act, 1994.

8 The appellant, in the present appeal, contended that they provided the Works Contract Services to the M/s. Reliance Industries Ltd. situated in the SEZ M/s. Reliance India Ltd., Jamnagar which is exempted in terms of Notification No. 12/2013-ST dated 01.07.2013, as amended. I further find that During the period of F.Y. 2014-15, Appellant was engaged in providing services of Works Contract Services, Erection, Commissioning and Installation and construction services other than residential services. Appellant further submits that as per Notification No. 12/2013-ST dated 01.07.2013, the services on which service tax is leviable under section 66B of the said Act, received by a unit located in a Special Economic Zone (hereinafter referred to as SEZ Unit) or Developer of SEZ (hereinafter referred to as the Developer) and used for the authorised operation from the whole of the service tax, education cess, and secondary and higher education cess leviable thereon.

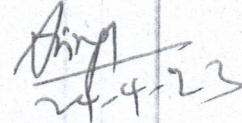
Thus, the services provided by contractor providing works contract services to SEZ in terms of Notification No. 12/2013-ST dated 01.07.2013 which are exempt services. Therefore, the impugned order confirming the demand is not sustainable on merits.

7. In view of the above, I set aside the impugned order and allow the appeal.
7. अपीलकरता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है ।
8. The appeal filed by the Appellant is disposed off as above.

सत्यापित / Attested



बी. एस. राना / B. S. RANA
जरीफ / Superintendent
के. व. एवं सेवा कर अपील, राजकोट
CGST Appeals, Rajkot



(शिव प्रताप सिंह)
(Shiv Pratap Singh)
आयुक्त (अपील)
Commissioner (Appeals)

By R.P.A.D.

सेवा में मेसर्स किरण कंस्ट्रक्शन, 573, दरबार गढ़ रोड, मेड़ी खाखीजलिया का नाका, तालुका-उपलेटा, राजकोट-360 490	To M/s Kiran Construction, 573, Darbar Gadh Road, Naka of Medi Khakhijalia, Taluka-Upleta, Rajkot-360490
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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) अपर/संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट को आवश्यक कार्यवाही हेतु।
- 4) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल -II राजकोट ।

5) मॉडर्न फाइल।

