



:: 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 / 2<sup>nd</sup> 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- 202304645X000000F06A

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / OIO No.	दिनांक/ Date
	GAPPL/COM/STP/3154/2022	63/LRM/AC/2021-22	26-03-2022

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

**RAJ-EXCUS-000-APP-089-2023**

आदेश का दिनांक / Date of Order:	<b>31.03.2023</b>	जारी करने की तारीख / Date of issue:	<b>06.04.2023</b>
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श्री शिव प्रताप सिंह, आयुक्त (अपील्स), राजकोट द्वारा पारित /

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

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

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

**M/s. Jiteshbhai Prabbubhai Charola (M/s. Patidar Enterprises), Romar Estate, Plot No. 11-1, Mahendranagar Road, Morbi, Dist- Morbi- 363641. Gujarat**

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) वार्गीकरण मूल्यांकन से सम्बन्धित सभी मामलों 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 (सिस्टट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /

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

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवाली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक को 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. 5,000/- Rs. 10,000/- where amount of duty demand/interest/penalty/refund is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग, ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक को उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.



- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी।

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जर्माना विवादित है, या जर्माना, जब केवल जर्माना 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 स्थान 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 को पुनरीक्षण आवेदन :  
Revision application to Government of India:

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

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

- (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 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.

- (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 ज्यूटी क्रेडीट 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 प्रतियाँ 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 प्रतियाँ 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 रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 1000 - का भुगतान किया जाए।

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

- (D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी 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-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए।। One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

- (F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों को 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](http://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](http://www.cbec.gov.in)



**अपील आदेश /ORDER-IN-APPEAL**

M/s Patidar Enterprise, Romar Estate, Plot No.11-1, Mahendranagar Road, Morbi-363 641 (*hereinafter referred to as* appellant) has filed appeal No. GAPPL/COM/STP/3154/2022 'against Order-in-Original No. 63/LRM/AC/2021-22 dated 26.03.2022 (*hereinafter referred to as* 'impugned order') passed by the Assistant Commissioner, Central GST Division, Morbi-II (*hereinafter referred to as* 'adjudicating authority'):-

2. The facts of the case, in brief, are that a show cause notice dated 24.09.2020 was issued to the appellant demanding service tax of Rs.2,97,461/- on the basis of data received from Income Tax Department for the period 2014-15. The adjudicating authority has decided the issue vide the impugned order and confirmed the demand. He imposed penalty of Rs.2,97,461/- under Section 78, Rs.10,000/- under Section 77(1)(a), Rs.10,000/- and under Section 77(2) of the Finance Act, 1994 on the appellant.

3.1 Being aggrieved, the appellant has filed present appeal wherein they contended that appellant is a proprietary concern and provided service of erection of HL, LT line, maintenance, fabrication etc which is a 'works contract' service. They contended that as per Sr.No.9 of Notification No.30/2012-ST dated 20.06.2012, the appellant is liable to pay only 50% of service tax liability as the service is provided to PGVCL, a company owned by Government of Gujarat. The appellant submitted that the value on which the service tax payable by them is below threshold of Rs.10 lakhs as per Notification No.33/2012-ST as computed below:

Period	Gross Amount	50% value due under RCM	Taxable value after abatement	Service Tax payable
2014-15	2406640	1203320	481328	Nil as the value below Rs.10 lakhs

3.2 The appellant also submitted that PGVCL is a company established by Gujarat Government having 100% ownership and hence they are eligible for exemption as per Sr. No.12(a) of Notification No.25/2012-ST. The appellant also submitted that cum-tax benefit should be granted to them as per Section 67(2) of the Finance Act, 1994. The appellant relied upon a catena of decisions in support of their claim to avail abatement on works contract service as per Rule 2A(ii) of Service Tax (Determination of Value) Rules, 2006.

3.3 The appellant further submitted that show cause notice dated 24.09.2020 was issued for the demand of service tax for the period 2014-15 and the period of limitation for the first half year was already completed.

Shri Devkaran P. Kanzaria, Consultant appeared for personal hearing on 10/02/2023 and reiterated the submissions made in the grounds of appeal. He



submitted that the appellant provided works contract service to a Government entity, PGVCL and the same is exempted from service tax. Even if full exemption not provided, the appellant is eligible for 70% rebate applicable to works contract services. He sought 10 days' time to make additional submissions with supporting documents and requested to set aside the Order-in-Original.

4.2 Appellant has further provided the additional submission dated 11.03.2023. He interalia contended that the service provided is a "works contract" service. The most of the material are provided by M/s. PGVCL. He has submitted the copies of the contract pertaining to the period of 2015-16 as copies of the contract for the period of 2014-15 was not available with him but nature of services was same as stated above. Further, the appellant was also providing own material such as Coal for Earthling, some Nut bolts etc. On verification of 26AS and Profit and Loss accounts, income ledgers for the period of 2014-15, it transpires that he has provided "works contract" service only to one recipient i.e. to M/s PGVCL.

4.3 The Appellant earned the said income of providing Works contract service falls under the Reverse Charge Mechanism (RCM) vide Sr.No.9, of the Notification 30/2012-ST dated 20.6.2012, effective from 1.7.2012, as amended, issued under Section 68(2) of the Finance Act, 1994 and the service tax liability is 50% of Rs. 12,03,320/- on the recipient of the service and 50% of total of Rs. 12,03,320/- on service provider and not 100% of service value of Rs.24,06,640/- for the service tax liability of above service on the notice firm.

4.4 The service provided is being a "Works Contract service" to M/s PGVCL, and after availing abatement of 60% value under Rule 2A(ii)(A) of the Service Tax (Determination of Value Rules), 2006, service tax shall be payable on the 40% of the total amount charged for the works contract.

4.5 Further, as per the small-scale exemption of the threshold limit of Rs. 10 lacs is also available under the Notification No. 33/2012-ST dated 20.6.2012, as amended and the taxable value in year 2014-15 were below Rs.10 lacs.

4.6 The adjudicating Authority has (i) not discussed and considered the written/oral submissions of the appellant to allow the exemptions and (ii) not allowed the abatement of 60% value available under Rule 2A(ii) of the Service Tax (Determination of Value Rules, 2006, (iii) not allowed the benefit of Reverse Charge Mechanism(RCM) available section 67(2) of the Finance Act, 1994 to the applicant and (iii) not considered the legitimate claim to consider that the gross amount charged can be treated as cum-tax value and the service tax element can be deducted from it to arrive at the taxable value of works contract service (iv) not allowed the legitimate claim of the benefit of the threshold exemption from the service tax up to Rs. 10 lacs available under Notification No. 33/2012-ST dated 20.6.2012, as amended, (v) not considered the applicable case laws cited by the appellant. There are various case laws of the Hon'ble High Court and Tribunal,



*[Handwritten signature]*

wherein the benefit of the abatement/RCM/Cum duty price/thresh hold exemptions, were allowed. He relied on the following case laws.

- (1) *Ramky Infrastructure Ltd. v. Commr. of Service Tax (2013) 029 STR 0033 (CESTAT-Bang)*
- (2) *CCE&C v. Advantage Media Consultant (2008) 14 STT 483 (Kol. - CESTAT)*
- (3) *Niranjana Lal Agarwal v. CCE, (CESTAT-Del) (2012) 026 STR 0457*
- (4) *M/s Arindra Electricals Vs Commissioner of Central Excise & ST (CESTAT Chandigarh)*
- (5) *M/s Shapoorji Pallonji and Company Pvt Ltd v/s C.C.; C. and S. Tax, Patna reported in 2016(42) S.T.R. 0681(Patna)*
- (6) *M/s Bharat Bhusan Gupta & Company v/s State of Haryana, reported in 2016(44) S.T.R. 0195(P and H)*
- (7) *C. C. Ex., v/s M/s Neral Paper Mills Pvt Ltd, reported in 2020(020) STR 0601(GUJ)*
- (8) *Commissioner of Service Tax, Ahmedabad v/s M/s Cadila Pharmaceutical Limited, reported in 2012(27) STR 0127 (Guj.)*
- (9) *M/s Bispa India v/s C. C. Ex, Siliguri, reported in 2013(1) ECS (182) (Tri-Kolkata)*
- (10) *Pahwa Chemicals Private Limited Vs. CCE, Delhi reported at 2005 (189) E.L.T. 257 (S.C.)*
- (11) *Aban Loyd Chiles offshore Ltd. vs. Commr. of Cus., Maharashtra reported at 2006 (200) E.L.T. 370 (S.C.)*

4.7 The appellant stated that the similar matter of the appeal F. No. V.2/76/Raj/2022 of appellant M/s Bhudarbhai Becharbhai Detroja, wherein the demand of the service tax confirmed against the contractors of M/s PGVCL vide Order dated 27.12.2022, have remanded the matter to the adjudicating authority and hence, the similar relief may be ordered, if the Order in Original is not considered for set aside. The appellant submitted copy of work order, ledger of income and profit and loss account for 2014-15.

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. The moot question to be decided in the present appeal is whether the appellant is liable to pay service tax on the work carried out by them.

6. I find that the appellant had made the argument before the adjudicating authority that they had provided service related to repair and maintenance of PGVCL, which is a 'Government Authority' and accordingly the services provided by them were covered under Notification No.25/2012-ST dated 20.06.2012. The adjudicating authority, in the impugned order, held that PGVCL is a body corporate incorporated under Companies Act, 2013 and the service provided by PGVCL are not covered under the works specified under Articles 243W of the Constitution of



*(Signature)*

India and hence the service is not covered under Sr. No.12(a) of Notification No.25/2012-ST.

7. In the present appeal, the appellant had made another argument that the services provided by them are 'work contract service' and as per Sr.No.9 of Notification No.30/2012-ST dated 20.06.2012, liable to pay only 50% of service tax liability. The appellant also contended that there is no service tax liability as the value of service after deducting 50% of value payable under RCM. I find that the adjudicating authority has addressed the issue at paragraph 21.4 and 21.5 of the impugned order, where he has categorically held that the service produced by the appellant is not works contract service. From the copy of work order submitted by the appellant, I observe that the work carried out by the appellant is fabrication work as per drawing and specification provided by M/s PGVCL and the materials were also provided by the said service recipient. As observed by the adjudicating authority, the income booked by the appellant in their ledger is 'income from job work'. Thus, it is very clear that the work carried out by the appellant is just job work i.e. fabrication work from the materials provided by M/s PGVCL and the said work does not fall under the definition of 'works contract' as defined under Section 65B(54) of the Finance Act, 1994. Accordingly, I hold that the adjudicating authority has correctly denied the benefit as per Sr.No.9 of Notification No.30/2012-ST dated 20.06.2012 i.e. to pay 50% of service tax under 'works contract' service.

8. As regarding the contention of the appellant that show cause notice dated 24.09.2020 was issued for the demand of service tax for the period 2014-15 and the period of limitation for the first half year was already completed, I find that as per Section 73 of Finance Act, 1994 show cause notice is required to be issued within 30 months in normal cases and, within 5 years in case of suppression etc, from the 'relevant date'. 'Relevant date' as per Section 73 of the Finance Act 1994 where no return is filed shall be the last date on which such return was required to be filed. In the present case, the late date of filing return for the period April to September 2014 was 25.10.2014 and, as per Section 73 ibid, show cause notice was required to be served by 24.10.2019. Thus, the show cause notice issued on 24.09.2020 is clearly time barred so far as the demand of service tax for the period April to September 2014 is concerned. As per the Form 26AS, the income booked or the period April to September 2014 is Rs.14,30,004/-. As per Form 26AS, total income is Rs.24,06,640/- and after deducting the amount of Rs.14,30,004/-, the service tax is demandable only on income of Rs.9,76,646/- which comes to Rs.1,20,712/-.

9. In view of above, I set aside demand of Rs.1,76,749/- (Rupees one lakh twenty six thousand seven hundred forty nine only) and uphold the demand of



*[Handwritten signature]*

Rs.1,20,712/- (Rupees one lakh twenty thousand seven hundred twelve only). I set aside penalty of Rs.1,76,749/- (Rupees one lakh seventy six thousand seven hundred forty nine only) and uphold penalty of Rs.1,20,712/- (Rupees one lakh twenty thousand seven hundred twelve only) under Section 78 of the Finance Act, 1994. However, I extend option of reduced penalty of 25% under second proviso of Section 78(1), if the tax, interest and penalty is paid within 30 days of receipt of this order. I also uphold the penalties under Section 77(1)(a) and Section 77(2) of the Finance Act, 1994 imposed on the appellant. However, keeping in view the facts and circumstances, I do not find it fit to ~~impose~~ <sup>impose</sup> maximum prescribed penalty under these sections. Therefore, I reduce the quantum of penalty from Rs. 10,000/- to Rs. 2,000/- each under Section 77(1)(a) and Section 77(2) of the Finance Act, 1994.

10. Impugned order stands modified as above.

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

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

सत्यापित / Attested

*Shreyam*

*Shiv Pratap Singh*  
31-3-23

के. जी. सावलाणी / K. G. SAVLANI  
अधीक्षक / Superintendent  
के. व. एवं सेवा कर अपीलस, राजकोट

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

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

सेवा में  
मेसेर्स पटीदार एंटरप्राइज,  
रोमर इस्टेट, प्लॉट 11-1,  
महेन्द्रनगर रोड,  
मोरबी-363 641

To  
M/s Patidar Enterprise,  
Romar Estate, Plot No.11-1,  
Mahendranagar Road,  
Morbi-363 641

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 मोरबी-II.
- 4) गार्ड फ़ाइल।



