



आयुक्त(अपील) का कार्यालय,

Office of the Commissioner (Appeal),

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद

Central GST, Appeal Commissionerate, Ahmedabad

जीएसटी भवन, राजस्वमार्ग, अम्बावाडी अहमदाबाद 380015.

CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015

07926305065

टेलीफैक्स 07926305136



DIN : 20220264SW000000FBC6

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/1509/2021 /5963-87

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-003-APP-96/2021-22
दिनांक Date : 24-01-2022 जारी करने की तारीख Date of Issue 07.02.2022

आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)

ग Arising out of Order-in-Original No. 40/D/GNR/KP/2020-21 दिनांक: 16.02.2021 issued by
Assistant Commissioner, CGST & Central Excise, Division Gandhinagar, Gandhinagar
Commissionerate

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

M/s Gujarat Industrial Development Corporation
B-23, GIDC Electronic Estate,
Sector-25, Gandhinagar

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे
बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the
one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

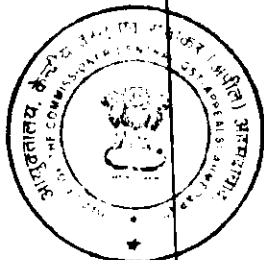
Revision application to Government of India:

(i) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतः नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को
उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व
विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit
Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New
Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first
proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या
किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी
कारखाने में या किसी भण्डागार में हो माल की प्रकिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur 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.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) 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 and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इका मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम होतो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

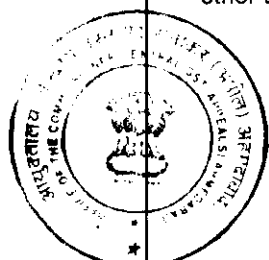
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(क) उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2ndमाला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद-380004

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad : 380004. in case of appeals other than as mentioned in para-2(i) (a) above.



- 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/- and Rs.10,000/- where amount of duty / penalty / demand / 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 Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

- (3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथार्थिती अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number 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 lacs fee of Rs.100/- for each.

- (4) न्यायालय शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथार्थिती निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.6.50 पैसे कान्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (71) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट), के प्रतिअपीलो के मामले में कर्तव्यमांग(Demand) एवं दंड(Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded)-

- (Section) खंड 11D के तहत निर्धारित राशि;
- लिया गलत सेनवैट क्रेडिट की राशि;
- सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि.

⇒ यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में, अपील दाखिल करने के लिए पूर्व शर्त बना दिया गया है.

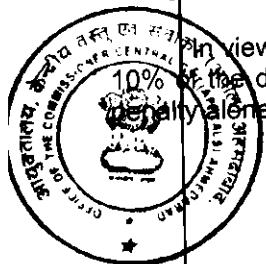
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (cxcvi) amount determined under Section 11 D;
- (cxcvii) amount of erroneous Cenvat Credit taken;
- (cxcviii) amount payable under Rule 6 of the Cenvat Credit Rules.

इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो मांग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, 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."

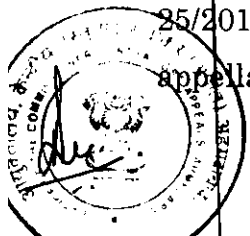


ORDER-IN-APPEAL

The present appeal has been filed by M/s. Gujarat Industrial Development Corporation, Electronics Estate Road, Electronics Estate, Sector 25, Gandhinagar (hereinafter referred to as the appellant or GIDC) against Order in Original No. 40/D/GNR/KP/2020-21 dated 16-02-2021 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST & Central Excise, Division : Gandhinagar, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2 Briefly stated, the facts of the case is that the appellant is holding Service Tax Registration No. AABCG8033DSD004. During the course of audit of the records of the appellant for the period from April, 2016 to June, 2017 by the departmental audit officers, the observations detailed in subsequent paras were raised.

2.1 A reconciliation of the income shown in their financial statements and those shown in their ST-3 returns indicated that there was a difference in the income shown by the appellant on account of various services namely, Administration Charges, Scrutiny Fees, Miscellaneous rent, Rent of Building, service charges, lease rent and non agricultural assessment and development charges. It appeared that the appellant had not discharged the service tax liability correctly for the F.Y. 2016-17 (upto June, 2017). It appeared that an activity was carried out by the appellant for their customers and there was a consideration received by them for the same. It, therefore, appeared that the activity carried out by the appellant falls within the meaning of service as defined under Section 65B (44) of the Finance Act, 1994 and which were not covered by the negative list of services under Section 66D of the Finance Act, 1994 and neither was any exemption granted under Notification No. 25/2012-ST dated 20.06.2012. Therefore, the activity carried out by the appellant appeared to be taxable under Section 65B (51) of the Finance



Act, 1994. On being pointed out, the appellant had paid the service tax amounting to Rs.16,64,532/- on 17.07.2020 but had not discharged the penalty and interest.

2.2 On verification of the ST-3 returns of the appellant for the period from April, 2016 to June, 2017, it was noticed that they had availed Cenvat credit amounting to Rs.11,12,131/-, however, they could not produce any document pertaining to the said cenvat credit. Upon being pointed out, the appellant reversed the cenvat credit amounting to Rs.11,12,131/- but they had not paid the penalty and interest.

2.3 It was also observed that a SCN was issued to the appellant by the Gandhinagar Division office for recovery of service tax on the income of Rs.1,17,86,607/-. The demand pertained to receipt of Miscellaneous income during the period from April, 2016 to June, 2017. On reconciling the final income statement furnished by the appellant in the course of the audit, it was observed that the appellant had actually collected an amount of Rs.1,18,80,838/- during the F.Y. 2016-17 and Rs.2,97,624/- during the period from April, 2017 to June, 2017. Thus, it appeared that there was a difference of Rs.3,91,855/- between the figures on which the SCN was issued and the one shown in their final income statement. The appellant, therefore, appeared liable to pay service tax amounting to Rs.58,778/- on the differential amount of Rs.3,91,855/-.

3. The appellant was, therefore, issued a SCN bearing No. 24/2020-21 dated 16.09.2020 from F.No. VI/1(b)-87/IA/C-VIII/AP-52/19-20 wherein it was proposed to :

- Demand and recover the service tax amount of Rs.16,64,532/- under the proviso to Section 73 (1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994 and



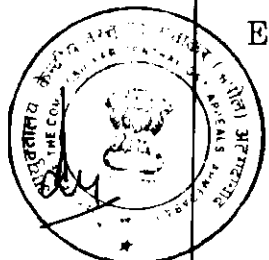
appropriate the amount of Rs.16,64,532/- paid by them on 17.07.2020.

- Demand and recover the service tax amounting to Rs.58,778/- under the proviso to Section 73 (1) of the Finance Act, 1994.
- Demand and recover the Cenvat Credit amounting to Rs.11,12,131/- under the proviso to Section 73 (1) of the Finance Act, 1994 read with Rule 14 (1) (ii) of the Cenvat Credit Rules, 2004 and appropriate the amount of Rs.11,07,129/- and Rs.5,002/- paid by them on 21.07.2020 and 17.07.2020 respectively.
- Impose penalty under Section 78 (1) of the Finance Act, 1994 and Rule 15 (3) of the Cenvat Credit Rules, 2004.

4. The said SCN was adjudicated vide the impugned order and the demand for service tax and cenvat credit were confirmed along with interest. The amounts already paid were appropriated. Penalty was also imposed under Section 78 (1) of the Finance Act, 1994.

5. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the following grounds :

- i. No service tax is payable on the miscellaneous income under the service category of Renting of Immovable Property service. The impugned order has been passed without understanding the nature of the transaction.
- ii. In the case of SCN issued to them in respect of GIDC Surendranagar region, the demand has been confirmed under the service category of Business Auxiliary Service. The department itself is unaware of the nature of the transaction and hence service tax is demanded under for the same nature of income under difference service category.
- iii. The Commissioner, Ahmedabad South has vide OIO No. AHM-EXCUS-COM-011-18-19 dated 28.09.2018 dropped the demand by



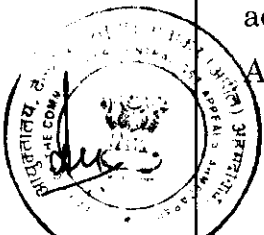
relying upon Sr.No. 39 of Notification No. 25/2012-ST dated 20.06.2012.

- iv. The detailed explanation of all the sub-heads. Plot Full payment and Plot Payment Installment (Capital Receipts) are lease premium i.e. one time collection done by them from the allottee at the time of allotment of plots. As per Section 104 (1) of the Finance Act, 1994, retrospective exemption w.e.f. 01.06.2007 has been given to these kind of lease premium
- v. As per Notification No. 41/2016-ST dated 22.09.2016, service tax was exempted on amount collected against long term lease of immovable property where upfront fee premium, salami, cost, price, development charges or by any other name collected is given retrospective exemption.
- vi. They are collecting ROU (Right to Use) charges from the allottees against right to use the plot for the agreemental purpose within the stipulated period. As the amount collected is in the nature of charges, this being not a service transaction, no service tax is required to be discharged on ROU charges collected by them.
- vii. They being a governmental authority, service tax shall not be leviable on the collection done by them against activity performed as stated in Article 243W of the Constitution of India, in terms of serial number 39 of Notification No. 25/2012-ST dated 20.06.2012.
- viii. GIDC has been established by the Legislature of the State of Gujarat under the Gujarat Industrial Development Act, 1962. Under Item 29 of the subjects allotted to Industries and Mines Department of the First Schedule to Gujarat Government Rules of Business, 1990 GIDC is specified. The Gujarat Government Rules of Business, 1990 is made under Article 166 of the Constitution of India. Therefore, in light of the above legal provisions, this essential is fulfilled by GIDC.
- ix. GIDC is empowered to make available buildings on hire or sale to industrialists or persons intending to start industrial undertakings or commercial establishments. They can also



construct buildings for housing of the employees of such industries or commercial establishments and allot factory sheds or buildings and shops etc. to suitable persons in the industrial estates or commercial centres established by GIDC. The aforesaid functions qualify as 'regulation of land use and construction of buildings'.

- x. They rely upon the decision of the Hon'ble Supreme Court in their own case which was reported as GIDC Vs. CIT AIR 1997 SC 3275.
- xi. They also rely upon the judgment of the Hon'ble High Court of Bombay in the case of CCE, Nashik Vs. Maharashtra Industrial Development Corporation – 2017 – TIOL-2629-HC-MuM-ST.
- xii. The Commissioner, CGST, Rajkot had in their own case, vide OIO No. RAJ-EXCUS-000-COM-04-17-18 dated 25.10.2017 relied upon serial number 29 of Notification No.25/2012-ST dated 20.06.2012 and dropped the demand.
- xiii. In the case of GIDC Mehsana region, the Commissioner (Appeals), Ahmedabad has dropped the demand of 'Miscellaneous Receipts'.
- xiv. As they are not liable to pay service tax, no interest under Section 75 is required to be paid.
- xv. The SCN for the period from April, 2016 to June, 2017 has been issued beyond the normal period of limitation by invoking the extended period of limitation. Extended period can be invoked only when there is fraud, collusion, mis-statement, suppression with an intent to evade payment of duty. There is no finding the SCN or the impugned order which can allege that they had intended to evade payment of tax.
- xvi. They rely upon the decision in the case of : Continental Foundation Vs. CCE- 2007 (216) ELT 177 (SC); CCE Vs. Pioneer Scientific Glass Works – 2006 (197) ELT 308 (SC); Pahwa Chemicals Pvt Ltd Vs. CCE – 2005 (189) ELT 257 (SC); Anand Nishikawa Co Ltd Vs. CCE – 2005 (188) ELT 149.
- xvii. They are a body corporate for performing statutory functions in accordance with the provisions of Gujarat Industrial Development Act, 1962. Being a governmental authority and working under the



significant control of the government, it cannot be said that they have a malafide intention for non-payment of service tax.

xviii. They rely upon the decisions in the case of :- CCE Vs. Bharat Petroleum Corporation Ltd – 2016 (344) ELT 657 (Tri.-Hyd); Karnataka State Tourism Dev. Corpn. Ltd – 2011 (21) STR 51 (Tri.-Bang.); Maharashtra State Seed Certification Agency Vs. CC& CE – 2015 (37) STR 655 (Tri.-Mumbai); Gujarat Narmada Valley Fertilizers & Chem. Ltd. Vs. CCE – 2015 (27) STR 796 (Tri.- Ahmd); Commissioner of Wealth Tax Vs. Jagdish Prasad Choudhary – 1996 AIR 58 (Patna); Gujarat Water Supply & Sewerage Board Vs. Unique Erectors (Gujarat) Pvt Ltd – 1989 AIR 973 (SC); Ram Krishna Travels Pvt Ltd Vs. CCE, Vadodara – 2007 TMI 977- CESTAT- Mumbai.

xix. Based on the above submissions, extended period cannot be invoked and penalty under Section 78 of the Finance Act, 1994 cannot be levied. Hence, penalty needs to be set aside.

xx. According to Section 67 (2) of the Finance Act, 1994 where the gross amount charged by the service provider is inclusive of the service tax payable, the value shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

6. Personal Hearing in the case was held on 17.11.2021 through virtual mode. Ms. Bhagyashree Dave and Ms. Komal Agrawal, Chartered Accountants, appeared on behalf of the appellant for the hearing. They reiterated the submissions made in appeal memorandum. They stated that penalty under Section 78 is not leviable as the ingredient of fraud etc. are missing.

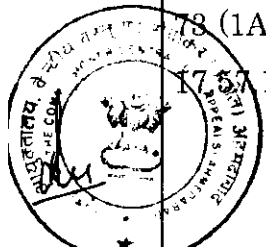
7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, submissions made at the time of personal hearing and additional written submissions as well as material available on records. The issues involved in the present appeal are :



- A. Whether the amounts collected by the appellants and shown under the head 'miscellaneous receipts in their financial records is liable to levy of Service Tax or not; and
- B. Whether the appellant is entitled to the exemption under Sr. No. 39 of the Notification no. 25/2012- ST dated 20.06.2012, in respect of the services rendered by them for which they received such miscellaneous income.

7.1 It is further observed that the appellant was also found to have short paid service tax amounting to Rs. 16,64,532/-, which was paid by them before issuance of the SCN. The appellant had also availed cenvat credit amounting to Rs.11,12,131/- without proper documents. The appellant reversed the cenvat credit before issuance of SCN. Penalty under Section 78 (1) of the Finance Act, 1994 has been imposed in respect of these amounts. The appellant are not disputing the amounts paid by them and are in appeal only against the penalty imposed upon them.

7.2 It is observed from the case records that based on audit observations, a SCN from F.No. VI/I (c)/Audit-I/1/GIDC/AP-VIII/SCN/2017-18 dated 19.04.2017 was issued by the Commissioner, erstwhile Central Excise and Service Tax, Audit-I, Ahmedabad proposing demand and recovery of service tax on various incomes, including the Miscellaneous Income, alongwith interest and penalty. The said SCN was adjudicated by the Commissioner, Central GST and Central Excise, Gandhinagar vide Order-in-Original No. AHM-EXCUS-003-COM-003-18-19 dated 20.04.2018 wherein he has confirmed the demand on miscellaneous income. Subsequently, the appellant was issued a show cause notice by the Assistant Commissioner, Central Excise & GST, Division-Gandhinagar, Commissionerate-Gandhinagar vide F.No. V/04-169/SCN-GIDC/17-18 dated 07.09.2018 under Section 78 (1A) of the Finance Act, 1994 demanding Service Tax amount of Rs. 17,57,122/- leviable on the Miscellaneous Income amounting to Rs.



Rs. 1,17,86,607/- received during the period from 01.04.2016 to 30.06.2017. The demand was confirmed by the adjudicating authority vide Order in Original No. 09/D/GNR/DK/19-20 dated 16.03.2020. The appellant had preferred an appeal against the said OIO before the Commissioner (Appeals), Ahmedabad. The appeal was rejected vide OIA No. AHM-EXCUS-003/APP-16/2021-22 dated 22.06.2021.

7.3 The SCN dated 07.09.2018 was issued under Section 73 (1A) of the Finance Act, 1994 on the basis of the details furnished by the appellant. Subsequently, in the course of audit of the records of the appellant, it was found that the actual Miscellaneous Receipts of the appellant during the period from April, 2016 to June, 2017, was Rs.1,21,78,462/- as against the amount of Rs.1,17,86,607/- furnished by the appellant to the department. The demand confirmed vide the impugned order pertains to this differential amount of taxable income and the issue involved is the same which was decided by me vide OIA No. AHM-EXCUS-003/APP-16/2021-22 dated 22.06.2021.

8. The relevant portion of the said OIA supra is reproduced as under

"6. I find that the appellant are engaged in providing taxable services of 'Renting of Immovable Property Services' and they have not disputed about collection of amount from allottees of plots/sheds etc. It is observed that the appellant has given vacant land on lease with infrastructural facilities such as road, electric line, water supply line etc., for furtherance of business and commerce to various Industries on long term lease basis as per the agreement made between both of them and the appellant collecting rent charges from such allottees which is classifiable under 'Renting of Immovable Property Services'. Besides this, they have also collected some of the charges from these allottees and shown in their accounts under different headings, one of which is 'Misc. Income'. As per the details submitted by the appellant vide their letter No. GIDC/RM/GNR/TRF/PLT/150 dated 17.02.2018, it is observed that they have collected Miscellaneous amount to the tune of Rs. 1,17,86,607/- from their clients of the shed/plot by the lease holders during the period from 01.04.2016 to 30.06.2017 on which no service tax has been paid.

6.1 As regards the issue of taxability on the aforementioned services of 'renting of immovable property' provided by the appellant, I find that 'service' is defined in clause (44) of Section 65B of the Finance Act, 1994 as activity carried out by a person for another for consideration, and includes a declared service. Section 65B (44) of the Finance Act, 1994 reads as under:



Section-65B. Interpretations.—

In this Chapter, unless the context otherwise requires,—

(44) "service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

(a) an activity which constitutes merely,—

(i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or (iii) a transaction in money or actionable claim;

(b) a provision of service by an employee to the employer in the course of or in relation to his employment;

(c) fees taken in any Court or tribunal established under any law for the time being in force.

6.2 In the instant case, it is an undisputed fact that the appellant are carrying out various activities for the persons who desire to establish an industry. These activities are not covered under the exclusion clause of Section 65B(44) of the Finance Act, 1994. Further, it is nobody's case that the appellant does not receive any consideration towards such activities. Thus, the appellant is carrying out an activity for another for a consideration and such activity is squarely covered under the four corners of Section 65B(44) of the Finance Act, 1994. Further, the appellant has also not disputed the fact that they are providing services to their customers.

I, therefore, conclude that the services provided by the appellant towards the 'Miscellaneous receipt/income' is a taxable service covered under Section 65B(44) of the Finance Act, 1994 w.e.f. 01.07.2012 under which Service tax is leviable under Section 66B of the Finance Act, 1994, read as under:

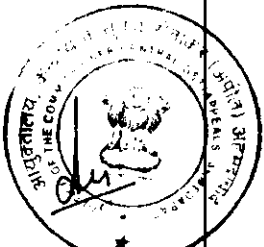
SECTION 66B. Charge of service tax on and after Finance Act, 2012.—

There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen percent on the value of all services, **other than those services specified in the negative list**, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

6.3 Further, Section 66E of the Finance Act, 1994 defines 'declared service' as any activity carried out by a person for another person for consideration and declared as such under Section 66E of the Act. It is observed that as specified in clause (a) of Section 66E of the Act, 'Renting of immovable property' is a declared service. The 'Renting' is defined in Section 65B(41) of the Finance Act, 1994 as follows :

"renting" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property;"

6.4 I find that when the above provisions are read together, it is clear that any activity of renting, when carried out by a person for another, for consideration, would amount to provision of service, which would be



taxable. After carefully gone through the entire list of services falling under the negative list under Section 66D of the Finance Act, 1994, I find that the services provided by the appellant do not fall under negative list of services under said Section 66D. Accordingly, it can be clearly concluded that the services provided by the appellant are correctly covered as taxable services under Section 65B(44) of the Finance Act, 1944 as well as a 'declared service' under Section 66E(a) of the said Act as any service on which service tax is leviable under Section 66B of the said Act.

6.5 Further, it is observed that the appellant has neither submitted any further details (except the bifurcation of the amounts in different sub-headings, as mentioned in table at para-3.3 above) in respect of nature of the services provided against such miscellaneous receipts nor any documentary evidences to prove that the said amount has been earned by them which did not involve any taxable service. They have merely explained only one head i.e. ROU Charges and that to without any documentary evidence. Accordingly, I find that such amounts collected by the appellant under various heads such as sub-letting fee, sub-division charges, amalgamation fee, collateral fee etc. from the lease holders and broadly classified in their books of accounts as 'Misc. Income/Receipts' are correctly classified under the category of "Renting of Immovable Property" services which is liable for Service Tax.

7. Further, it is observed that the appellant in the present case has also claimed exemption under Sr. No. 39 of the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 by considering themselves, as a governmental authority.

7.1 As regards the status of the appellant as a 'Governmental Authority' for the purpose of the abovementioned notification, it is observed that the adjudicating authority has also accepted that the appellant is covered under the definition of 'governmental authority' as per the clause 2(s) of the said Notification No. 25/2012-ST, further amended vide Notification No. 2/2014-ST dated 30.01.2014. However, I find that the exemption is available only to the services provided in relation to any function entrusted to a municipality under article 243 W of the Constitution. The relevant text of the notification is reproduced under for ease of reference:

"39. Services by a governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution."

7.2 Accordingly, I find that the above legal provision provides that a twofold condition is required to be fulfilled viz. (1) the services should be provided by a Governmental Authority and (2) services should be in relation to any function entrusted to a municipality under article 243W of the Constitution. In the instant case, the services have been provided by a Governmental Authority but for the purpose of ascertaining the benefit of exemption, it is of utmost importance that the services should have been provided in relation to any function entrusted to a municipality under article 243 W of the Constitution. The Schedule XII of the Constitution of India, lists out the following functions to be performed by the municipalities:

.....
.....

On going through the abovementioned list under Twelfth Schedule (Article 243W) of the Constitution, I find that the services provided in the present case i.e. renting of immovable property for to the Industries/lease



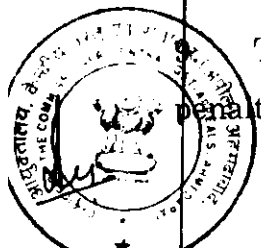
holders is not covered under Article 243W of the Constitution. Therefore, the second part of the condition is not fulfilled and therefore the exemption under Sr. No. 39 of Notification No. 25/2012-ST is not admissible to the services of renting of immovable property.

7.3 As discussed in the para-6.5 above, the appellant has neither submitted any further details (except the bifurcation of the amounts in different sub-headings, as mentioned in table at para-3.3 above) in respect of nature of the services provided against the amounts collected as 'miscellaneous receipts/income' nor any documentary evidences to prove that such amounts have been earned by them against the services provided by them in relation to any of the function entrusted to a municipality under article 243 W of the Constitution, as listed in Twelfth Schedule. The Apex Court has also held in the case of Mysore Metal Industries [1988 (36) ELT 369 (SC)] that the burden is on the party who claims exemption, to prove the facts that entitled him to exemption. Accordingly, I find that the appellant in the present case failed to submit any details or to produce any substantial evidences justifying their claim for exemption under the abovementioned Notification No. 25/2012-ST dated 20.06.2012 and hence, their contention as regards their entitlement under the said notification is not acceptable"

8.1 The demand in the present appeal is in respect of the same period and on the same issue. The SCN came to be issued to the appellant only for the differential amount of taxable value. Since the issue stands decided by me vide the OIA supra and there is nothing on record to indicate that the said OIA has been stayed or overruled, I do not find any reason for taking a different view in the present appeal and accordingly, I hold that the appellant are liable to pay service tax on the income booked under the head of Miscellaneous Receipts.

8.2 The appellant have also contended that the larger period of limitation cannot be invoked as there was no intent to evade payment of tax. In this regard, I find that the earlier SCN dated 07.09.2018 was issued to the appellant on the basis of the details furnished by them. Therefore, the discrepancy in the amount of taxable value, subsequently unearthed in the course of the audit, is attributable to mis-statement of facts on the part of the appellant and hence, the extended period of limitation has been correctly invoked for raising the demand for service tax short paid.

The other issue involved in the present appeal is the imposition of penalties, on three different counts, under Section 78 (1) of the Finance



Act, 1994. I find that penalty of Rs. 16,64,532/- was imposed for short payment of service tax on various services namely Admin Charges, Scrutiny Fees, Rent of Building etc. The appellant had upon being pointed out in the course of the audit, paid the service tax on 1.07.2020. A penalty of Rs.11,12,131/- was imposed upon the appellant for wrong availment of cenvat credit without cover of proper documents. Penalty of Rs. 58,778/- was imposed for short payment of service tax on miscellaneous receipts. The appellant have contended that they are a government authority and working under significant control of the state government, hence, it cannot be said that they had a malafide intention for non- payment of service tax. They have also relied upon a number of judgments of the appellate authorities in their support.

9.1. In this regard, the appellant is registered with Service Tax department and are expected to follow the law governing the service tax. In the era of self-assessment, the responsibility of the tax payer to comply with the provisions of the Finance Act, 1994 and the Cenvat Credit Rules, 2004 is all the more greater. The onus is on the appellant to ascertain their correct service tax liability and discharge the same. Further, the appellant was also bound to ascertain the correctness and their eligibility to avail the cenvat credit. They have failed to discharge the obligation cast upon them and it was only in the course of the audit of the records of the appellant that the short payment of service tax and wrong availment of cenvat credit was unearthed. Having failed to discharge their statutory obligations, the appellant cannot have any rightful claim to there being no mens rea on their part. I am, therefore, of the view that there is no merit in the contention of the appellant and penalty has been correctly imposed upon them.

10. In view of the facts discussed herein above, I hold that appellant are liable to pay service tax amounting to Rs.58,778/- in the income booked under the head of Miscellaneous Receipts. Therefore, the demand is upheld along with interest under Section 75 of the Finance



Act, 1994. I also uphold the penalties of Rs. 16,64,532/-, Rs.11,12,131/- and Rs. 58,778/- imposed under Section 78 (1) of the Finance Act, 1991 vide the impugned order.

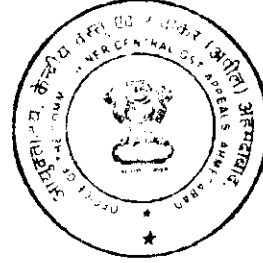
11. Accordingly, the impugned order is upheld and the appeal filed by the appellant is rejected.

12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.

Akhilesh Kumar
24 January, 2022
(Akhilesh Kumar)
Commissioner (Appeals)
Date: .01.2022.

Attested:

(N. Sanyanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.



BY RPAD / SPEED POST

To

M/s. Gujarat Industrial Development Corporation, Appellant
Electronics Estate Road,
Electronics Estate,
Sector 25, Gandhinagar

The Assistant Commissioner, Respondent
CGST & Central Excise,
Division Gandhinagar,
Commissionerate : Gandhinagar

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Assistant Commissioner (HQ System), CGST, Gandhinagar.
(for uploading the OIA)

- ☒ 4. Guard File.
5. P.A. File.