



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
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आजादी का  
अमृत महोत्सव

**By SPEED POST**

DIN:- 20230264SW000000D087

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/2714/2022-APPEAL / 8931-35
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-130/2022-23 and 27.02.2023.
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	28.02.2023
(ङ)	Arising out of Order-In-Original No. 21/ST/OA/ADJ/2022-23 dated 24.06.2022 passed by the Assistant Commissioner, CGST, Division-Himmatnagar, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Mavish Infrastructure and Consultancy Pvt. Ltd., Vaishvanar Society, Opp. Sai Mandir, Malpur Road, Modasa, Aravalli, Gujarat-383315

कोई व्यक्ति इस अपील-आदेश से असंतोश अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो 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:**

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत 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 :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4<sup>th</sup> 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 :-

(क) 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।

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.

(ख) 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।

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.

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

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

(घ) 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।

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.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-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 इ का 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.

(3) 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.

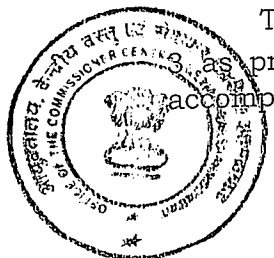
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(2) उक्तलिखित परिच्छेद 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 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-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 यथास्थिति 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 शुल्क अधिनियम 1970 यथा संबोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 6.50 पैसे 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 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.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो 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)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) 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।

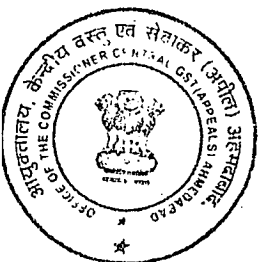
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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:

- (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.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग 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."

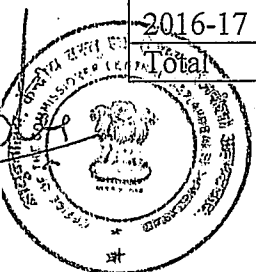


अपीलियआदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s. Mavish Infrastructure and Consultancy Private Limited, 2, Vaishvanar Society, Opposite Sai Mandir, Malpur Road, Modasa, Gujarat, Aravalli - 383315 (hereinafter referred to as the appellant) against Order in Original No. 21/ST/OA/ADJ/2022-23 dated 24.06.2022 [hereinafter referred to as "impugned order"] passed by the Assistant Commissioner, CGST, Division: Himmatnagar, Commissionerate: Gandhinagar [hereinafter referred to as "adjudicating authority"].

2. Briefly stated, the facts of the case are that the appellant were engaged in providing services under the category of 'Construction of residential complex and other than residential complex, including commercial/industrial buildings or civil structures' and registered under Service Tax Registration No. AAICM7848KSD001. As per the information received from the Income Tax department, discrepancies were observed in the total income declared in Income Tax Returns/Form 26AS of the appellant for the period F.Y. 2015-16 and F.Y. 2016-17 vis-à-vis those in the ST-3 Returns filed for the said period. In order to verify the said discrepancies as well as to ascertain the fact whether the appellant had correctly discharged their Service Tax liabilities during the period F.Y. 2015-16 and F.Y.2016-17, a letter was issued to the appellant. They failed to file any reply to the letter. It was observed that the nature of service provided by the appellant were covered under the definition of 'Service' as per Section 65 B(44) of the Finance Act, 1994 (FA,1994) and during the relevant period, they appeared to be taxable. In the absence of any other available data for cross-verification, the Service Tax liability of the appellant for the F.Y. 2015-16 and F.Y.2016-17 was determined on the basis of difference between 'Sales of Services' shown in the ITR-5 and those shown in their ST-3 returns for the relevant period and calculated as below:

Financial Year	Value of Services Income or Services provided as per ST-3 Returns (in Rs.)	Value of Services declared as per TDS (including 194C, 194Ia, 194Ib, 194J, 194H) shown in Form 26AS. (in Rs.)	Difference between ITR data and ST-3 returns. (in Rs.)	Service Tax payable (including SBC & KKC) (in Rs.)
F.Y. 2015-16	1,30,05,307/-	1,52,01,832/-	21,96,525/-	3,18,496/-
F.Y. 2016-17	44,36,192/-	96,15,175/-	51,78,983/-	7,76,847/-
<b>Total</b>	<b>1,74,41,499/-</b>	<b>2,00,02,742/-</b>	<b>73,75,508/-</b>	<b>10,95,343/-</b>



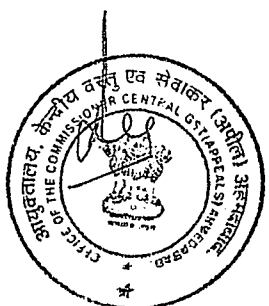
3. The appellants were issued a Show Cause Notice vide F. No. V/15-34/CGST-HMT/O&A/20-21 dated 21.07.2020 (in short 'SCN') wherein it was proposed as under:

- An amount of Rs. 73,75,508/- purportedly not declared by the appellant should be considered as taxable value for calculation of service tax.
- Demand and recover service tax amounting to Rs. 10,95,343/- under the proviso to Section 73 (1) of the Finance Act, 1994 alongwith Interest under Section 75 of the Finance Act, 1994 ;
- Impose penalty under Section 78 of the Finance Act, 1994;

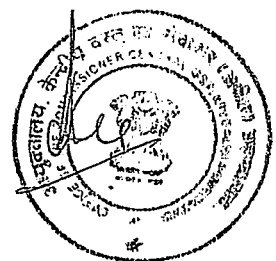
4. The said Show Cause Notice was adjudicated vide the impugned order vide which the proposals of the SCN were confirmed with option for reduced penalty under clause (ii) of Section 78(1) of the Finance Act, 1994.

5. Being aggrieved with the impugned order, the appellants have filed the instant appeal, alongwith application for Condonation of Delay in filing appeal, on following grounds:

- The SCN was issued on the basis presumption based on third party data without considering the facts that the services may be exempted under Negative List or under Notification No. 25/2012-ST or under Reverse Charge Mechanism.
- Extended period of limitation is not invocable as the department has not produced any corroborative evidences to substantiate their claim of suppression of facts.
- In respect of F.Y. 2015-16, the turnover reported in the ST-3 Returns of the appellant are matched with the turnover as per audited financial statement. The department has matched ST-3 Returns with Form 26AS, which is incorrect, because as per Income Tax Act, TDS is required to be deducted by the entities on provision in books of accounts also. They have not issued the invoices as they had booked the said income in the subsequent year.



- The amount of Rs. 21,95,525/- has been wrongly considered as taxable value for the F.Y. 2015-16, as the said amount does not pertain to the said F.Y.
- In respect of F.Y. 2016-17, they contended that the excess turnover for the F.Y. 2015-16 was considered as income in the F.Y. 2016-17 and, therefore, the turnover for the F.Y. 2016-17 is on the higher side.
- During the period F.Y. 2015-16 and F.Y. 2016-17, they had provided services as sub-contractors to M/s L&T Limited for construction of Additional Two Lanes for Halol-Godhra-Shamlaji Road under Viability Gap Fending Scheme of Govt. of India on Build, Operate and Transfer (BOT) basis and their services merit exemption in terms of Serial No. 13(a) of Notification No. 25/2012-ST dated 20.06.2012, read with Circular No. 147/16/2011-Service Tax dated 21.10.2011.
- As the adjudicating authority has considered the services provided by them as 'Works Contract Service', therefore in the event of their services being considered taxable, the same should be covered under Original Work as per Rule 2A of the Service Tax (Determination of Value) Rules, 2006 and the effectively service tax would be payable on 40% of the taxable value.
- The appellants are eligible for cum-duty benefit in terms of Section 67 of the Finance Act, 1994.
- They relied on the following decisions in support of their contentions :
  - The decision of the Hon'ble Allahabad High Court in the case of Commissioner Vs Sharma Fabricators & Erectors Private Limited (2019)
  - Decision of the Hon'ble Supreme Court in the case of Oudh Sugar Mills Ltd. Vs UOI (1978).
  - Decision of the Hon'ble Supreme Court in the case of Cosmic Dye Chemical Vs Collector of Cen. Excise, Bombay [ 1995(75) ELT 721 (SC).

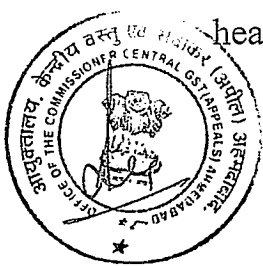


- Tamilnadu State Housing Board Vs CCE 1995 Supp(1) SCC 50 1994.
- P.Jani & Co. Vs Commr. of Service Tax, Ahmedabad ;

5.1 Vide their additional submission dated 06.01.2023, they have submitted that:

- The SCN was issued only on the basis of data received from Income Tax department without carrying out any verification and without specifying the category of Service under which service tax was demanded.
- They also cited Instructions issued by the CBIC vide Instruction dated 26.10.2021 vide which it was instructed that indiscriminate demand should not be raised and confirmed on the basis of Income Tax data.
- They cited the judgement of Hon'ble High Court of Madras in the case of R. Ramdas Vs Joint Commissioner of Central Excise, Puducherry – 2021 (44) GSTL 258 (Mad.) and the views taken by the Commissioner (Appeals), Ahmedabad in the case of M/s A One Scaffolding Supplier Vs Joint Commissioner (2021).
- They submitted the following documents with this submission :
  - Copy of Concession agreement between Gujarat State Road Development Corporation Limited and L&T Halol-Shamlaji Tollway Private Limited.
  - Copy of Work order No. ID926WOD6000109 of L&T Halol-Shamlaji Tollway Private Limited.
  - Copy of L&T work order request – E5427WOR4000145.
  - Copy of Financial Statement of F.Y.2015-16 and F.Y.2016-17.
  - Copy of Sample Invoices.
  - Copy of Contract between L&T HGS Tollway Limited & Mavish Infrastructure & Consultancy Pvt. Ltd.
  - Copy of Work Order of L&T Ltd, Construction E4841WOD5000147.

6. Personal Hearing in the case was held on 09.01.2023. Shri Sachin Dharwal, Chartered Accountant, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in the appeal memorandum.



7. In their application for condonation of delay, the appellants had attributed the delay of 14 days in filing appeal on account of medical reasons of their Director responsible for day to day operations. It was further attributed to completing formalities for payment of pre-deposit under ACES portal. Their reasons and explanations were found to be cogent and convincing. Hence, the delay of 14 days in filing appeal is condoned under proviso to Section 85 (3A) of the Finance Act, 1994.

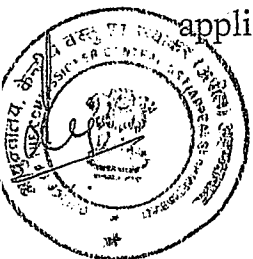
8. I have gone through the facts of the case, submissions made in the Appeal Memorandum, in the additional submissions and those made during personal hearing as well as materials available on record. The issue before me to decide is whether the impugned order issued by the adjudicating authority, confirming the demand of Service Tax amounting to Rs. 10, 95,343/- alongwith interest and penalties, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16 and F.Y. 2016-17.

9. It is observed from the case records that the appellant were registered with the service tax department and had filed their ST-3 Returns for the period F.Y. 2015-16 and F.Y. 2016-17. The SCN in the case was issued entirely based on the data received from the Income Tax department and as per the ITR-5. During the period F.Y. 2015-16 and F.Y. 2016-17, the 'Value of Services declared' as per ITR data had shown an excess income of Rs. 73,75,508/- when compared to the Service Tax returns filed by the appellant. As they had not responded to the communications from the department, the SCN in the case was issued.

9.1 I find it relevant to refer to the CBIC Instruction dated 26.10.2021, wherein at Para-3 it is instructed that:

...  
*3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. ...*  
 ...

Considering the facts of the case and the specific Instructions of the CBIC, I find that the SCN has been issued indiscriminately and mechanically without application of mind, and is vague.





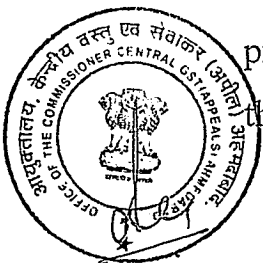
10. It is further observed that the adjudicating authority has considered the submissions made by the appellant and has denied the benefit of exemption claimed under Entry No. 13 (a) of Notification No. 25/2012-ST dated 20.06.2012 by holding that the WCS for construction of 'Toll Tax Terminal' cannot be considered same as construction and maintenance of 'Transport Terminal'. Further, the appellant had failed to produce any documents evidencing claim of exemption by the main contractor for said construction of toll tax terminal.

11. It is observed that during the period F.Y. 2015-16 and F.Y. 2016-17, the appellant had filed their ST-3 Returns classifying their services under 'Construction of Residential complex Service', 'Works Contract Service' and 'Consulting Engineer Service'. They have claimed to provide the following services during relevant period:

- a. 'Construction of Toll Tax Terminals (Toll Plazas)' to L&T at various Highway Projects as sub-contractors of M/s L&T Halol Shamlaji Tollway Limited;
- b. 'Kerb painting works' at project six laning of Samakhiyali - Gandhidham road project;
- c. 'Construction of drain, footpath, kerb and allied works' of Halol-Godhara-Shamlaji Road Project;
- d. 'kerb painting, rain water harvesting structure, manpower, all types of road construction, terminal (toll)' at four laning of L&T Ltd. construction project;

All these works were covered under 'Work Contract Service' (WCS) and they were provided to the main contractors, like M/s Ashish Infra, M/s L&T Exe, Nadiad, M/s L&T Halol-Toll way Pvt. Ltd, and M/s L&T Ltd. These facts are undisputed.

12. As regards the F.Y. 2015-16, it is observed that the appellant have contended that the 'Difference between ITR data and ST-3 Returns' shown in the SCN for the F.Y. 2015-16 amounted to Rs. 21,96,525/-. They have explained that it had occurred due to calculation mistake as the same was towards provision made in the books of account and the actual payment was received in the next financial year when service tax was discharged. The TDS is calculated



and paid on provision also and therefore it was shown in Form 26 AS. The said income is not shown in their audited balance sheet. It is observed in this regard that the appellant have not submitted any reconciliation statement or any other documents to support their contention that the said amount was actually considered towards receivable in the Balance Sheet and that applicable service tax was paid. Further, they have also not submitted any documents to prove that the liability of payment of service tax in respect of this amount was in the next financial year. Hence, I find that the contentions made by the appellant are without any corroboration and is liable for rejection.

13. As regards the F.Y. 2016-17, it has been contended by the appellant that the difference of Rs. 51,78,983/- was entirely on account of provision of exempted services under Sl. No. 13 (a) of Notification No. 25/2012-ST dated 20.06.2012. The relevant Entry at Serial No. 13 (a) of Notification No. 25/2012-ST dated 20.06.2012 reads as under:

13. *Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of-*  
 (a) *a road, bridge, tunnel, or terminal for road transportation for use by general public;*

It is undisputed that the services provided by the appellant is classified under 'Works Contract Service'. Further, it is also found that all their activities pertained to works related to construction/ widening/ six-laning/ toll-terminal building/ drainage construction/ footpath construction/ kerb painting etc. in respect of road projects. Needless to mention that all highways and roads are meant for use by general public. The appellant have, as part of additional written submission, submitted copies of various contracts under which they have executed their services.

13.1. As regards the availability of exemption for construction of 'Toll Tax Terminal', it is observed that the Hon'ble CESTAT, SZB, Bangalore in the case of GMR Projects Pvt. Ltd. Vs Commissioner of C. Ex, Customs and S. Tax, Bangalore reported as 2021 (44) G.S.T.L. 110 (Tri. - Bang.), ruled as:

6. Having considered the rival contentions and perusal of record, we hold that construction like toll plaza, cattle/pedestrian crossing facilities, parking bay for buses/trucks, rest room for staff and common public at large, etc. are also part of the road, as these are meant for exclusive use by the highway staff and the people using these roads. Further we take notice of several judgments of the Tribunal



wherein even greenery done in the middle of the road, by way of divider or on the side of the roads, as well as crash barriers erected on the side of the roads all form part of the road and not exigible to service tax. We also take note of the decision of the Delhi Bench of this Tribunal in the case of Jagdish Prasad Agarwal v. CCE, Jaipur-I [2017 (3) G.S.T.L. 455 (Tri. - Del.)]. Accordingly, we hold that the appellant is entitled for the exemption under Section 65(105)(zzzz). We also hold that the show cause notice is bad for invocation of extended period of limitation as the same is issued merely on change of opinion on the part of the Revenue. Accordingly, this appeal is allowed and the impugned order is set aside. The appellant is entitled to consequential benefits in accordance with law.

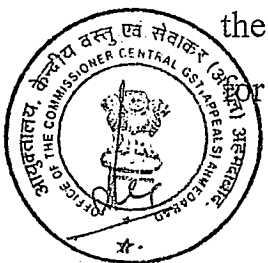
Above decision of the Hon'ble Tribunal was upheld by the Hon'ble Supreme Court of India in the case of C.C.E. & C.S.T., Bangalore Service Tax – 1 Vs GMR Projects Pvt. Ltd in Civil Appeal No. 8237 of 2022, decided on 7-11-2022, reported as 2022 (67) G.S.T.L. 5 (S.C.). The Hon'ble Apex Court, while dismissing the departmental appeal against the above order, ruled as:

...  
2. We do not find any good ground and reason to interfere with the impugned order/judgment and hence, the present appeal is dismissed.  
..

13.2. In view of the above judicial pronouncements, which are binding in nature, I find that the adjudicating authority has erred in denying the exemption to the appellant in respect of construction of 'Toll Tax Terminal' under Entry at Serial No. 13 (a) of Notification No. 25/2012-ST dated 20.06.2012, as amended. It is also observed that the adjudicating authority has not given any findings in respect of other work orders and has summarily rejected them on the grounds that they had not submitted any documents to show that the main contractor was exempt from service tax. The findings given by him are vague and hence the impugned order to that extent becomes a non-speaking order.

13.3. It is observed that the appellant has submitted various work orders during appeal proceedings. Hence, it would be in the interest of justice that the matter is remanded back to the adjudicating authority for arriving at correct reconciliation for the F.Y. 2016-17 after analyzing the documents/work orders submitted by the appellant. The other contentions of the appellant regarding abatement in case of work contract service as well as of cum-duty benefit shall also be examined by the adjudicating authority while finalizing assessment.

14. In view of the discussions made above, I uphold the impugned order to the extent of confirmation of demand of service tax amounting to Rs. 3,18,496/- for the F.Y. 2015-16 along with interest and penalty. Further, I set aside the



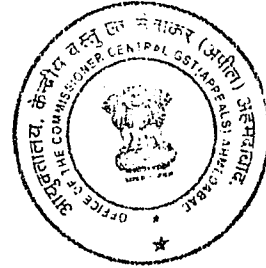
impugned order passed by the adjudicating authority to the extent of confirmation of demand of service tax amounting to Rs. 7,76,847/- for the F.Y. 2016-17 and allow the appeal filed by the appellants by way of remand to the adjudicating authority in terms of directions contained in Para 13.2 and Para 13.3 above. The appellant are directed to submit all the relevant documents and financial records within 15 days before the adjudicating authority. The adjudicating authority shall adjudicate the case after considering the documents submitted by the appellant following the principles of natural justice.

15. ~~अपीलकर्ताद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।~~  
The appeal filed by the appellant stands disposed of in above terms.

*Akhil Kumar*  
27 February, 2023..  
(AKHILESH KUMAR)  
Commissioner (Appeals)  
Date: 27th February, 2023

Attested:

*(Signature)*  
(Somnath Chaudhary)  
Superintendent (Appeals),  
CGST, Ahmedabad.



BY RPAD / SPEED POST

To

M/s. Mavish Infrastructure and Consultancy Private Limited,  
2, Vaishvanar Society,  
Opp. Sai Mandir,  
Malpur Road, Modasa,  
Gujarat, Aravalli - 383315

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Commissionerate - Gandhinagar.
3. The Assistant Commissioner, Central GST Division - Himmatnagar,  
Commissionerate : Gandhinagar.
4. The Assistant Commissioner (System), CGST, Appeals, Ahmedabad. (for  
uploading the OIA)
5. Guard File.
6. P.A. File.