



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015
GST Bhavan, Ambawadi, Ahmedabad-380015
Phone: 079-26305065 - Fax: 079-26305136
E-Mail : commrappl1-cexamd@nic.in
Website : www.cgstappealahmedabad.gov.in



आजादी का
अमृत महोत्सव

By Regd. Post

DIN No.: 20230364SW000000DA39

(क)	फाइल संख्या / File No.	GAPPL/COM/STD/79/2022-APPEAL / 9910-1W
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-150/2022-23 and 24.03.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	27.03.2023
(ङ)	Arising out of Order-In-Original No. 27/ST/OA/ADJ/2021-22 dated 01.03.2022 passed by the Assistant Commissioner, CGST & C.Ex., Division-Himmatnagar, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Office of the Assistant/Deputy Commissioner, CGST & CE, Division-Himmatnagar, Gandhinagar Commissionerate, 2nd Floor, Central Excise Building, Sector 10/A, Opp. St. Xavier School, Near CH3 circle, Gandhinagar-382010
(छ)	प्रतिवादी का नाम और पता / Name and Address of the Respondent	M/s MI Electric Co., Krishnanagar Society, Opp. Bhagwati Balghar, Alkapuri, Pologround, Himmatnagar, Gujarat-383001

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, 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-
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 प्रक्रिया 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 भीतर मूल-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 संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

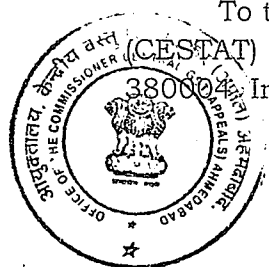
The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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



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 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 संशोधित 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."



अपीलिय आदेश / ORDER-IN-APPEAL

The Assistant Commissioner, CGST & Central Excise, Himmatnagar Division, Commissionerate - Gandhinagar (hereinafter referred to as the 'Appellant Department'), in pursuance of the Review Order No. 08/2021-22 dated 20.05.2022 issued under Section 84 of the Finance Act, 1994 from F.No. GEXCOM/REV/ST/OIO/4064/2022-REV-O/o COMMR-CGST-GANDHINAGAR by the Commissioner, CGST & Central Excise, Gandhinagar, has filed the present appeal against the Order-in-Original No. 27/ST/OA/ADJ/2021-22 dated 01.03.2022 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, CGST, Himmatnagar Division, Commissionerate - Gandhinagar (hereinafter referred to as the "adjudicating authority") in the matter of M/s. M I Electric Co., Krishnanagar Society, Opp. Bhagvati Balghar, Alkapuri, Pologround, Himmatnagar - 383001 (hereinafter referred to as the "respondent").

2. Facts of the case, in brief, are that the respondent was holding Service Tax Registration No. AAWFM6620LSD001 for providing Works Contract Service. An analysis of gross value of sale of service declared in the Income Tax Return/TDS returns and in the Service Tax Returns was undertaken by the Central Board of Direct Taxes (CBDT) and the analysis was shared with Central Board of Indirect Taxes (CBIC). It was observed that during the period F.Y. 2016-17, the gross value of Sale of Service declared in the Service Tax Returns (ST-3) filed by the respondent was less than the gross value of Sale of Services declared in their Income Tax Returns/TDS Returns filed with Income Tax department. Therefore, it appeared that the respondent has misdeclared the gross value of Sale of Services in the Service Tax Returns (ST-3) and short paid / not paid the applicable Service Tax. Letters/e-mails dated 05.05.2020 and 28.05.2020 were issued to the respondent requesting them to provide documents like Balance Sheet, Profit & Loss Account, Income Tax Returns, Form-26AS and Sales Ledger for the F.Y. 2016-17 to verify whether they had discharged their Service Tax liabilities properly. However, they did not respond. It appeared to the jurisdictional officers that the nature of activities carried out by the respondent as per the Income Tax data were covered under the definition of service and hence they were liable to levy of Service Tax at appropriate rate. Accordingly, the differential Service Tax payable by the respondent was determined on the basis of difference between the



value of "Sales/Gross Receipts (derived from Value reflected in ITR)" as provided by the Income Tax Department and the taxable value declared in their ST-3 Returns for the Financial Year 2016-17 as below:

(amount in Rs.)

Financial Year	Taxable Value as per IT Data i.e Sales/Gross Receipts from Services (From ITR)	Value as per ST-3 Returns	Difference between IT Data and ST-3 data	Service Tax payable @ 15%
2016-17	31,02,112/-	0/-	31,02,112/-	4,65,317/-

2.1 A Show Cause Notice was issued to the respondent from F.No. V/15-23/CGST-HMT/O&A/20-21 dated 30.06.2020 (in short SCN) vide which it was proposed to demand and recover Service Tax amounting to Rs. 4,65,317/- under proviso to Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75. Penalty was proposed under Section 78 of the Finance Act, 1994 (FA, 1994).

3. The SCN was adjudicated by the adjudicating authority vide the impugned order, wherein the demand of Service Tax amounting to Rs. 4,65,317/- was dropped alongwith interest and penalty.

4. Being aggrieved with the impugned order, the Appellant Department has preferred this appeal on the grounds as mentioned in the subsequent paragraphs.

4.1 The proceedings initiated by the SCN was dropped by the adjudicating authority on the basis that the services provided by the respondent was in the nature of Works Contract Service (laying of electrical cable between Grid/sub-stations/transformers stations en-route to UGVCL) which was exempted vide Sr.No. 3 of the Table of Circular No.123/5/2010-TRU dated 24.05.2010. Further, the respondent, being a sub-contractor, the services provided by them to the main contractor was also considered exempted under Sr. No. 29 (h) of Notification No. 25/2012-ST dated 20.06.2012, as amended, by the adjudicating authority.

4.2 The decision of the adjudicating authority holding the services of the respondent as exempted is bad in law as the exemption under Circular No.123/5/2010-TRU dated 24.05.2010 is not applicable for the period under dispute. Section 65 of the Finance Act,1994 was applicable till 30.06.2012. With effect from 01.07.2012, the Negative List based service tax regime was introduced vide Notification No. 20/2012-ST dated 05.06.2012. Hence, the demand dropped



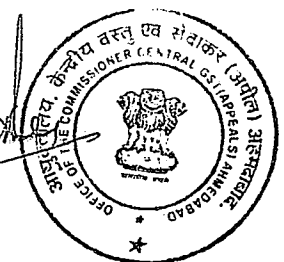
by the impugned order relying on the exemptions vide the above circular is bad in law.

4.3 The services rendered by the respondent being of the nature of "Service portion in the execution of a works contract" and provided after 01.07.2012, they were covered under 'Declared Services' in terms of Section 66(E) (h) of the Finance Act,1994. Therefore, they were not covered under the negative list. Further, the exemptions extended to the respondent by the adjudicating authority vide Sr. No. 29(h) of the Notification No. 25/2012-ST dated 20.06.2012 was not applicable in the instant case as the services provided by the main contractor were not exempted.

5. Personal Hearing in the case was held on 13.03.2023. Shri Shakir V. Chauhan, Chartered Accountant, appeared on behalf of the respondent for hearing. He reiterated the submissions made in the cross-objection to appeal.

5.1. In the cross-objection to the appeal filed by the respondent on 13.03.2023 they have made submissions as under :

- The respondents were engaged in carrying out the work of Uttar Gujarat Vij Company Limited for laying of electric cables between grids/sub-stations/transformer stations enroute. During the period F.Y. 2016-17, they had received an amount of Rs. 26,02,112/- for providing the said services.
- Similar services were rendered to another contractor, who is also engaged in the work of Uttar Gujarat Vij Company Limited for laying of electric cables between grids/sub-stations/transformer stations enroute and during the period an amount of Rs. 5,00,000/- was received from the said contractor.
- In both the above cases, the Service recipient were M/s Uttar Gujarat Vij Company Limited, which is a 'body corporate'. While filing their reply to the SCN, the respondent had wrongly claimed exemptions under the old service tax regimes i.e pre Negative List period from the entire amount of service tax confirmed. Although the nature of services provided remained same, the applicability of exemption in new regime is required to be checked for consideration.

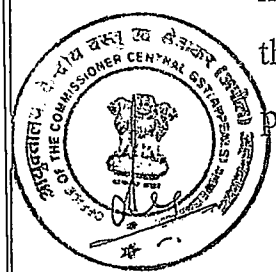


- The copy of work order issued by UGVCL shows that the same is only a contract for supply of labour for the work of laying of electric cables between grids/sub-stations/transformer stations enroute.
- In terms of Section 68(2) of the Finance Act, 1994, in case of taxable services provided by the respondent, the service recipient was eligible for payment of Service Tax.
- They submitted copy of Certificate dated 04.08.2020 issued by UGVCL, Himmatnagar certifying that during the period F.Y. 2016-17, the respondents were registered as GEB Contractor and had done only Erection Work and the Service Tax was paid by UGVCL under RCM; copy of letter of acceptance of tender for erection dated 03.01.2017 issued by UGVCL, Himmatnagar showing the period of completion of the work as 365 days from the date of issuance of work order.

6. I have carefully gone through the facts of the case, grounds of appeal, the written submissions made by the respondent as well as submissions made at the time of personal hearing. It is observed that the issue to be decided in this case is whether the impugned order passed by the adjudicating authority, dropping the Service Tax demand of Rs. 4,65,317/- alongwith interest and penalties, is legal and proper or otherwise. The demand pertains to period F.Y. 2016-17.

7. I find that the SCN was issued on the basis of data received from Income Tax department. The respondents are registered with the department and the SCN has classified the services of the respondent under the category 'Works Contract Service'. The demand has been raised on the basis of difference in value of services appearing in the Income Tax Returns compared with the value shown in the ST-3 Returns filed by the respondent.

7.1. It is further observed that the SCN was issued entirely based on the data received from Income Tax department considering the differential value of services as 'Taxable Value' in calculating the demand of Service Tax, without carrying out any verification of the facts. It is also observed that neither the SCN nor the impugned order speaks about any exemption/abatement claimed/availed by the respondents vide their ST-3 returns. The respondents were engaged in providing works contract service and the said service is eligible for abatement in



value and also for exemption from payment of service tax. Therefore, I find that the SCN issued in the case was in clear violation of the CBIC Instructions dated 20.10.2021, relevant portion of the Instructions is reproduced as under :

...

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. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee

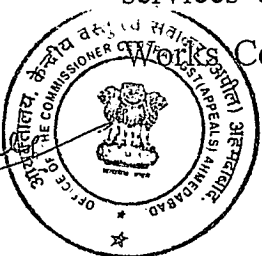
...

Considering the facts of the case, I find that the SCN was issued indiscriminately and mechanically without appreciation of facts available on record and is vague.

8. It is observed from the case records that during the F.Y. 2016-17 the appellant had provided services valued at Rs. 26,02,112/- to M/s Uttar Gujarat Vij Company Limited (UGVCL), Himmatnagar, and Rs. 5,00,000/- to M/s P.G. Panchal & Co., totally amounting to Rs. 31,02,112 /-, which has been considered as the taxable value in the SCN. The adjudicating authority has dropped the demand of service tax considering the claim of the appellant that services rendered to M/s UGVCL amounting to Rs. 26,02,112/- were exempted vide Sr.No.3 of the Table of Circular.No.123/5/2010-TRU dated 24.05.2010 and the services rendered to M/s P.G.Panchal & Co.. amounting to Rs. 5,00,000/- were exempted vide Sr. No. 29(h) of the Notification No. 25/2012-ST dated 20.06.2012.

9. It is the contention of the appellant department that Section 65 of the Finance Act, 1994 was applicable upto 30.06.2012. With effect from 01.07.2012 the Negative List based service tax regime was introduced vide Notification No. 20/2012-ST dated 05.06.2012. Accordingly, Section 65 of the FA,1994 was abolished. Therefore, the exemptions under Circular No. 123/5/2010-TRU dated 24.05.2010 would not apply to a demand pertaining to the period F.Y. 2016-17.

9.1 I find that, this contention of the department has been admitted by the respondent as their bonafide mistake in representing their case. It is also observed that during the relevant period F.Y. 2016-17, the respondents have classified their services under 'Works Contract Service' accordingly, exemptions in respect of Works Contract Service would flow from different provisions and not under the



provisions claimed by the respondent and granted by the adjudicating authority. Therefore, I find that, the adjudicating authority has erred in extending the benefit of exemption to the respondent for services amounting to taxable value of Rs. 26, 02,112/- on the basis of non-existent provisions which is legally incorrect and untenable. Hence, the impugned order passed by the adjudicating authority to that extent is liable to be set aside.

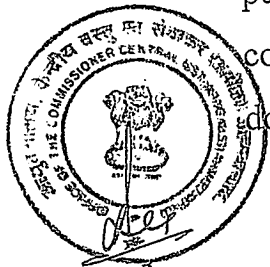
10. The Appellant Department has further contended that the exemption granted by the adjudicating authority vide Sr. No. 29(h) of the Notification No. 25/2012-ST dated 20.06.2012 was also wrongly extended as the main contractor providing service was not exempted. I find it relevant to refer to the provisions of exemption granted vide Sr. No. 29(h) of the Notification No. 25/2012-ST dated 20.06.2012 which reads as :

*Government of India
Ministry of Finance
(Department of Revenue)*

*Notification No. 25/2012-Service Tax New Delhi, the 20 th June, 2012
G.S.R.....(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17 th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17 th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-*

- ...
- 29. Services by the following persons in respective capacities –*
- (a) sub-broker or an authorised person to a stock broker;*
 - (b) authorised person to a member of a commodity exchange;*
 - (c) mutual fund agent to a mutual fund or asset management company;*
 - (d) distributor to a mutual fund or asset management company;*
 - (e) selling or marketing agent of lottery tickets to a distributor or a selling agent;*
 - (f) selling agent or a distributor of SIM cards or recharge coupon vouchers;*
 - (g) business facilitator or a business correspondent to a banking company or an insurance company, in a rural area; or*
 - (h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;*
- ...

10.1 Co-relating the above provisions of the Notification with the facts of the case, I find that during the relevant period the respondent have declared their services under 'Works Contract Service'. The adjudicating authority, at Para no. 15 of the impugned order, has recorded that the main contractor is exempted from the purview of service tax. However, the findings of the adjudicating authority are not cogent and convincing in as much as that the same is not supported by relevant documents to bring out the fact that service receiver is also providing Works



Contract Service and the said service is exempted. I also find that the respondents have not submitted any documents in this regard in support of their contention before this authority. Therefore, the order passed by the adjudicating authority in dropping the demand for a taxable value of Rs.5,00,000/- by extending the exemption in terms of Sr. No. 29(h) of the Notification No. 25/2012-ST dated 20.06.2012 is legally unsustainable and liable to be set aside.

11. In view of the above, I find that the impugned order passed by the adjudicating authority is legally unsustainable and is liable to be set aside. The matter is required to be sent back to the adjudicating authority for examining the merits of the case based on the legal provisions prevalent during the period of dispute. Accordingly, the impugned order is set aside and the case is remanded back to the adjudicating authority for adjudication afresh. The respondents are directed to submit their representation alongwith all relevant documents within 15 days of receipt of this order. The appeal filed by the Appellant Department is allowed by way of remand.

12. अपीलकर्ताद्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

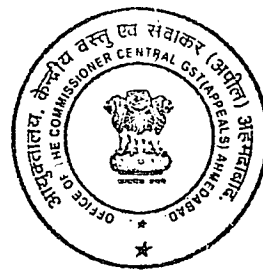
The appeal filed by the department stands disposed of in above terms.

(Signature)
24th March, 2023.
(Akhilesh Kumar)
Commissioner (Appeals)

Date: 24th March, 2023

Attested

(Signature)
(Somnath Chaudhary)
Superintendent (Appeals)
CGST & CE, Ahmedabad



By Regd. Post A. D

1. The Assistant Commissioner
CGST, Division- Himmatnagar,
Commissionerate - Gandhinagar

APPELLANT

2. M/s. M I Electric Co.
Krishnanagar Society,
Opp. Bhagvati Balghar, Alkapuri,
Pologround, Himmatnagar - 383001

RESPONDENT

Copy to :

1. The Pr. Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST, Commissionerate - Gandhinagar.
3. The Deputy/Asstt. Commissioner, CGST, Division-Himmatnagar, Commissionerate - Gandhinagar.
4. The Deputy/Asstt. Commissioner (Systems), CGST, Appeals, Ahmedabad (for uploading)
- ✓ 5. Guard file
6. PA File



