



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STD/188/2022-APPEAL / 329 - 333
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-158/2022-23 and 31.03.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	05.04.2023
(ङ)	Arising out of Order-In-Original No. AHM-CEX-003-REASSIGNED-AC-NLC-40-21-22 dated 16.06.2022 passed by the Assistant Commissioner (Sevottam), CGST & C.Ex., Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Office of the Assistant/Deputy Commissioner, CGST & CE, Division-Mehsana, Gandhinagar Commissionerate, 2nd Floor, Sardar Patel Vyapar Sankul, Mal Godoun Road, Mehsana-384002
(छ)	प्रतिवादी का नाम और पता / Name and Address of the Respondent	M/s Transformer Consulting Service (PAN-BMBPP3921M), 16, Sainath Complex, Keidu Cross Road, Visnagar, Gujarat-382870

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।

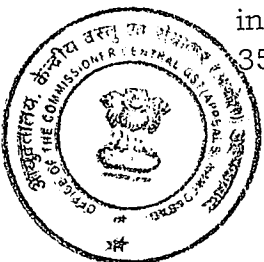
Any person aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way.

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-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 रूपये या उससे कम होतो रूपये 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2ndfloor, 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-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 in 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, Division - Mehsana, Commissionerate - Gandhinagar (hereinafter referred to as the 'Appellant Department'), in pursuance of the Review Order No. 08/2022-23 dated 11.08.2022 issued under Section 84 of the Finance Act, 1994 from F.No. GEXCOM/REV/ST/OIO/18870/2022-REV-O/o COMMR-CGST-GANDHINAGAR by the Commissioner, CGST & Central Excise, Gandhinagar, has filed the present appeal against the Order-in-Original No. AHM-CEX-003-REASSIGNED-AC-NLC-0040-21-22 dated 16.06.2022 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, CGST & Central Excise, Sevottam, Commissionerate - Gandhinagar (hereinafter referred to as the "adjudicating authority") in the matter of M/s. Transformer Consulting Service, Patel Vaas, 11, Biliya, Vijapur, Mehsana (hereinafter referred to as the "respondent").

2. Facts of the case, in brief, are that the respondent were holding Service Tax Registration No. BMBPP3921MSD001 for providing taxable services. As per information received from Income Tax department discrepancies were observed in the total income declared in the Income Tax Return/Form 26AS in comparison to the Service Tax Returns (ST-3) of the respondent for the period F.Y. 2014-15. In order to verify whether the respondents had discharged their service tax liability properly during the F.Y. 2014-15, letter/e-mail dated 19.06.2020 was issued to them requesting to provide relevant documents. 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 2014-15 as below:

Financial Year	Taxable Value as per IT Data i.e Sales/Gross Receipts from Services (From ITR) (in Rs.)	Value as per ST-3 Returns (in Rs.)	Difference between IT Data and ST-3 data (in Rs.)	Service Tax payable @ 15% (in Rs.)
2014-15	35,11,124/-	0/-	35,11,124/-	4,33,974/-



2.1 A Show Cause Notice was issued to the respondent from F.No. IV/16-13/TPI/PI/Batch 3C/2018-19/Gr.II dated 25.06.2020 (in short SCN) vide which it was proposed to demand and recover Service Tax amounting to Rs. 4,33,974/- under proviso to Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75. Penalties were proposed under Sections 77(2), 77C and 78 of the Finance Act, 1994 (FA, 1994).

3. The SCN was adjudicated vide the impugned order, wherein the demand of Service Tax amounting to Rs.4,33,974/- 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 by extending the exemption provided vide Sr. No. 12 of Notification No. 25/2012-ST dated 20.06.2012. The respondent were engaged in providing services to M/s Uttar Gujarat Vij Nigam Limited (UGVCL) and the adjudicating authority has considered the service receiver as a Government of Gujarat undertaking. Vide Para-27 of the impugned order, the adjudicating authority has held that the services provided by the respondent falls under the category of services provided to 'Government' and is not used for commerce, industry or any other business or profession.

4.2 Clause 12 of Notification No. 25/2012-ST dated 20.06.2012 envisages to exempt services provided to 'Government', 'local authority' or Governmental authority' only. As the term 'Government' is not defined under the Finance Act, 1994, the definitions as per clause (23) and clause (60) of Section 3 of the General Clauses Act, 1897 was considered to define the term. Upon co-relating the definitions of 'Central Government' and 'State Government' as per the General Clauses Act, 1897 with the status of the service receiver i.e M/s UGVCL, department has concluded that M/s UGVCL do not qualify as 'Government'.

4.3 The term 'Local Authority' has been defined vide clause (31) of Section 65B of the Finance Act, 1994 and in terms of the definitions, M/s UGVCL, which has been incorporated under the Companies Act,1956, do not qualify as a Local



Authority. The definition of the terms 'governmental authority' was drawn from clause (s) of Paragraph-2 of the Notification No. 25/2012-ST dated 20.06.2012. In terms of the said definition referring to the list of 18 functions entrusted to the municipality, the function carried out by M/s UGVCL i.e distribution of electricity was not covered under the ambit and therefore M/s UGVCL do not qualify as 'governmental authority' also. As M/s UGVCL do not qualify as 'Government' or 'local authority' or 'Governmental authority' and the activities (distribution of electricity in the northern areas of Gujarat state) carried out by M/s UGVCL are not covered under the 12th Schedule of Article 243W of the Constitution of India, therefore, the exemption extended to the respondents by the adjudicating authority vide Sr. No. 12(a) of Notification No. 25/2012-ST dated 20.06.2012 resulting in dropping the demand of Rs. 4,33,974/- is not in accordance of law and liable to be set aside.

5. A cross-objection to the appeal was filed by the respondent vide email dated 06.03.2023 wherein they submitted that:

- The contentions of the appellant department are not in line with the exemption notification. The adjudicating authority has correctly interpreted the same and allowed exemption to the respondents. The appeal filed by the department is arbitrary and is required to be set aside.
- M/s UGVCL was incorporated by Government of Gujarat. The company is incorporated for electricity generation and distribution. As a part of the power reforms process, the Electricity Act, 2003 was passed by the Central Government and Gujarat Electricity Industry (Re-organisation & Regulation) Act, 2003 was passed by the Government of Gujarat to restructure the Electricity industry with an aim to improve efficiency in management and delivery of services to consumers. Accordingly, erstwhile Gujarat Electricity Board (GEB) was re-organized effective from 01.04.2005 into 07 Companies with functional responsibilities of Trading, Generation, Transmission and Distribution of electricity. Consequently following seven companies were formed :
 - Gujarat Urja Vikas Nigam Ltd. (GUVNL) – Holding Company
 - Gujarat State Electricity Cor. Ltd (GSECL) – Generation
 - Gujarat Energy Transmission Corp.Ltd. (GETCO) – Transmission



- Uttar Gujarat Vij Company Ltd. (UGVCL) – Distribution
- Madhya Gujarat Vij Company Limited (MGVCL) – Distribution
- Dakshin Gujarat Vij Company Ltd. (DGVCL) – Distribution
- Pashchim Gujarat Vij Company Ltd. (PGVCL) – Distribution

GUVNL was incorporated as a Govt. of Gujarat Company. Since 100% shares in the other six companies are held by GUVNL, w.e.f 01.04.2005 they have become subsidiary companies of GUVNL as per the provisions of the Companies Act, 1956. These facts are not presented in the appeal memorandum.

- The respondent produced data from Ministry of Corporate Affairs which clearly identified UGVCL as a State Government Company.
- As per the definition of “governmental authority”, which specifies that any company established by Government with 90% or more participation by government. Considering the participation of government in UGVCL, it is a ‘governmental authority’.
- They relied on the decision of CESTAT in the case of Aravindra Electricals Vs Commissioner of Central Excise & Service Tax, Chandigarh – 2018 In. (ST) 153.

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

7. 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. 4,33,974 /- alongwith interest and penalties, in the facts and circumstances of the case, is legal and proper or otherwise. The demand pertains to period F.Y. 2014-15. During the period, the respondents have provided service to Uttar Gujarat Vij Nigam Limited (UGVCL), which is undisputed. The only issue disputed by the appellant department is whether UGVCL can be



categorized as 'Government' or 'Local authority' or 'Governmental authority' or otherwise.

7.1 I find that the SCN was issued to the respondent on the basis of data received from Income Tax department. The respondents are registered with the department and the SCN was issued without classifying the services and the demand was raised on the basis of differential value of services appearing in the Income Tax Returns compared with the value shown in the ST-3 Returns filed by the respondent. 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 in their ST-3 returns. Therefore, I find that the SCN was issued in the case in violation of the CBIC Instructions dated 20.10.2021. The relevant portion of the said 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 causing any verification and is vague.

7.2 It is observed from the case records that during the F.Y. 2014-15, the appellant had provided services worth Rs. 35,11,124/- to M/s Uttar Gujarat Vij Company Limited (UGVCL), which has been considered as the taxable value in the SCN and this amount is not disputed by the respondent. 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. 35,11,124/- were exempted vide Clause 12 (a) of the Notification No. 25/2012-ST dated 20.06.2012.

8. It is the contention of the appellant department that the adjudicating authority has grossly erred in extending the benefit of exemption to the respondent



in terms of Clause 12 (a) of the Notification No. 25/2012-ST dated 20.06.2012 considering the service recipient i.e UGVCL as a 'Government'/ 'Governmental authority' and the impugned order is bad in law. Department has further contended that UGVCL do not qualify to be termed as "government" or "local authority" or "governmental authority". Therefore, the benefit of exemption has been wrongly extended by the adjudicating authority.

8.1. I find it relevant to refer to the provisions of exemption granted vide Clause 12 (a) of the Notification No. 25/2012-ST dated 20.06.2012. The relevant portions of the said notification reads as below:

*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:-

12. Services provided to the Government, a local authority or a governmental authority by way of construction , erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of—

- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;*
- (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);*
- (c) a structure meant predominantly for use as

 - (i) an educational,*
 - (ii) a clinical, or*
 - (iii) an art or cultural establishment;**
- (d) canal, dam or other irrigation works;*
- (e) pipeline, conduit or plant for

 - (i) water supply*
 - (ii) water treatment, or*
 - (iii) sewerage treatment or disposal; or**
- (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act;...*

8.2 From the above, I find that the Clause 12 (a) of the Notification No. 25/2012-ST dated 20.06.2012 envisages that services related to "construction , erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration" when provided to 'Government', a 'local authority' or a 'governmental authority' are exempted from Service Tax under Section 66B of the



Finance Act, 1994. Examining the above provisions of the Notification with the facts of the case, I find that during the relevant period the respondent have provided services to M/s Uttar Gujart Vij Nigam Limited (UGVCL) only. It is further observed that the adjudicating authority, at Para nos. 25 and 27 of the impugned order, has recorded that the respondents have submitted copy of Form 26 AS and it reflects that during the period F.Y. 2014-15 the respondents have received amounts only from UGVCL. The adjudicating authority has further relied upon the decision of Hon'ble CESTAT in the case of Arvindra Electricals Vs Commissioner, Central Excise and Service Tax, Chandigarh – (CESTAT) 2018 ITL (ST) 153 and arrived at the conclusion that the services were provided to government and hence, not liable to service tax.

8.3 The respondents have contended that, during the year – 2003 Gujarat Electricity Ind. (Re-organisation & Regulation) Act, 2003 was passed by the state government to re-structure electricity industry and erstwhile Gujarat Electricity Board (GEB) was reorganized with effect from 01.04.2005 to seven companies with specific functional responsibilities. GUVNL was formed as the holding company with 100% state government ownership and 100% shares of the remaining six companies were held by GUVNL. UGVCL was among the six companies. This fact is also accepted by the department as detailed at Para-13 of the Grounds of Appeal. Apart from UGVCL other companies with identical responsibilities of distribution of electricity were MGVL, DGVCL and PGVL. From the above it is apparent that UGVCL is a State Government company.

8.4 The term 'Governmental Authority' is defined under clause (s) of Para 2 of the Mega Exemption Notification under the head 'Definitions' as an authority or a board or any other body established with 90% or more participation by way of equity or control, by Government and set up by an Act of the Parliament or State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution of India. As discussed above, 100% shares of UGVCL is held by GUVNL which is a company with 100% State Government holding. In other words, UGVCL is established with 90% or more participation of the Government of Gujarat by way of equity. Further, in terms of 12th Schedule of Article 243W of the Constitution of India, among the powers, authority and responsibilities of the Municipalities the first listed is 'Urban Planning including



Town Planning'. As per Ministry of Urban Development, Urban planning is defined as :

"Urban Planning is a combination of social, economic, environmental, and constructive efforts to make an urban dwelling a good, healthy place to live, work, and to move around."

Further, the Ministry has specified a 7 step Strategy for Urban Planning, excerpts are reproduced below :

STRATEGY OF URBAN PLANNING

The seven steps to be followed when working on an urban plan are as follows:

Step 1: Assessment of needs - The experts involved in urban planning have to assess various needs of the cities, towns, and municipalities such as housing, sanitation, land use, public places, electricity, etc., and prioritize those needs strategically. If it is a five year plan, they have to specify the yearly needs based on their urgency.

Step 2: Setting objectives ...

Step 3: Develop a strategy consistent with objectives ...

Step 4: Identify and quantify inputs ...

Step 5: Identify and quantify outputs ...

Step 6: Project and monitor outcomes

Step 7: Impact assessment

Upon sequential analysis of the above, I find that 'Electricity' is considered an essential part of Urban Planning which is a primary responsibility of the Municipality. Consequently, the department/body providing and managing 'Distribution of Electricity' in a region or area, which is owned by Government by way of 90% or more participation in equity, stands classified as a 'Governmental Authority'. As UGVCL is a state government company created for planning and distribution of Electricity in the northern region of Gujarat State, the said company would appropriately be classified under 'Governmental Authority'. The contention of the appellant department in this regard is not supported by facts and is liable to be rejected.

9. In view of the discussions made in the foregoing paragraph, I find that there is no merit in the department appeal as regards denial of exemption to UGVCL under 'Governmental Authority'. Further, the adjudicating authority, while dropping the demand has recorded in the impugned order that the respondents have submitted copy of Form-26 AS and calculation of work done as per Form-26AS and Income Tax documents and the appellant department have not challenged the same and have not come out with any shortcomings with the documents accepted by the adjudicating authority. It is also observed that since the SCN is vague, the adjudicating authority cannot be expected to go beyond the scope of the SCN for


deciding issues which are not disputed. I also find that the adjudicating authority has based his findings relying on the decision of the Hon'ble CESTAT in the case of Aravindra Electricals Vs Commissioner of Central Excise & Service Tax, Chandigarh – 2018 In. (ST) 153, which is not disputed by the appellant department.

10. In view of the above, the appeal filed by the Appellant Department against the impugned order is dismissed being devoid of merits.

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

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

Akhil Kumar
 (Akhil Kumar) 31st March, 2023
 Commissioner (Appeals)
 Date: 31st March 2023



Attested

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

By Regd. Post A. D

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

APPELLANT

2. M/s. Transformer Consulting Service
 Patel Vaas, 11, Biliya, Vijapur, Mehsana

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-Mehsana, Commissionerate - Gandhinagar.
4. The Deputy/Asstt. Commissioner (Systems), CGST, Appeals, Ahmedabad (for uploading)

5. Guard file

6. PA File