



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

**By Regd. Post**

DIN No.: 20221264SW000000CFFF

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| (क) | फ़ाइल संख्या / File No.   | GAPPL/COM/STP/753/2022-APPEAL / 5985-89  |
| (ख) | अपील आदेश संख्या और दिनांक /<br>Order-In-Appeal No. and Date  | AHM-EXCUS-003-APP-077/2022-23 and 14.12.2022   |
| (ग) | पारित किया गया /<br>Passed By   | श्री अखिलेश कुमार, आयुक्त (अपील)<br>Shri Akhilesh Kumar, Commissioner (Appeals)                                    |
| (घ) | जारी करने की दिनांक /<br>Date of issue  | 16.12.2022   |
| (ङ) | Arising out of Order-In-Original No. PLN-AC-STX-06/2021-22 dated 17.01.2022 passed by the Assistant Commissioner, CGST & CE, Division-Palanpur, Gandhinagar Commissionerate |  |
| (च) | अपीलकर्ता का नाम और पता /<br>Name and Address of the Appellant  | M/s Coincide Infrastructure, 01-A, Harkor Nagar Society 2, Behind Adarsh High School, Patan (N.G.), Gujarat-384265 |

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 से 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 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-8 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

This order arises out of an appeal preferred by M/s. Coincide Infrastructure, 01 A, Harkor Nagar Society 2, Behind-Adarsh High School, Patan (N.G.) - 384265 [hereinafter referred to as "the appellant" for the sake of brevity] against Order-In-Original No. PLN-AC-STX-06/2021-22 dated 17.01.2022 [hereinafter referred to as the "impugned order"] passed by the Assistant Commissioner, CGST, Palanpur Division, Gandhinagar Commissionerate [hereinafter referred to as the "adjudicating authority"]. The appellant were registered with the Service Tax Department under Service Tax Registration No. APEPP9563LSD001 for providing taxable services i.e. Manpower Recruitment / Supply Agency Service, Maintenance or repair service, Works Contract Service and other Taxable Services - Other than the 119 listed.

2. Intelligence was gathered by the officers of Directorate General of Central Excise Intelligence, Ahmedabad [now Directorate General of GST Intelligence, Ahmedabad] that certain civil contractors engaged in providing various taxable services such as construction services, consultancy services, maintenance, repair service, security service etc. to the Govt. authorities or Local authorities, were neither registered with service tax department nor paying service tax on the services provided to Govt. authorities or Local authorities. It was observed that the services provided to the Govt., were earlier exempted by virtue of Notification No.25/2012-S. Tax dated 20.06.2012 [ Entry No.12, items (a), (c) and (f)] but it got omitted vide Notification No. 6/2015-S. Tax dated 01.03.2015 and hence they became taxable services w.e.f. 01.04.2015. Further, amendment were brought vide Notification No. 9/2016 – ST dated 1<sup>st</sup> March, 2016 whereby the earlier exemption was restored but with a clause that service contract should have been entered into prior to 01.03.2015. Hence, fresh service agreements/contracts executed after 01.03.2015 became taxable.

2.1. The appellant was one such government contractor against whom investigation was conducted by the officers of DGGI, Vapi under Summons mode. The appellant had provided documents vide their letter Reference No. NIL dated 14.06.2019. They also provided Bank Account statement and some

Bills raised by them during the period from April 2015 to June 2017.



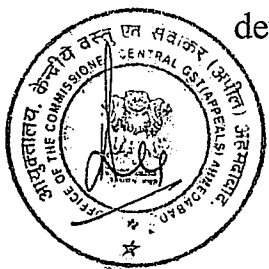
Statement of Shri Rakesh M Patel, Proprietor of the appellant firm, was also recorded on 23.12.2020. On perusal of the records/documents made available by the appellant, it appeared that the appellant had provided Works Contract Services to the following government entities:

- i. Project Implementation Unit, Gandhinagar;
- ii. Road and Building Department, Patan;
- iii. Panchayat Division Road and Building Department, Patan & Mehsana;
- iv. Nagarpalika, Patan;
- v. Sardar Sarovar Nigam Limited, Gandhinagar; and
- vi. Executive Engg. Dharoi Canal Division, Visnagar.

2.2. Upon scrutiny of the Balance Sheets for the F.Y.2015-16 and 2016-17, FORM 26AS (F.Y.2015-16 & 2016-17), reconciliation statement and Work orders/Contracts/Agreements it was observed that during the period April-2015 to June-2017 the appellant has received contract income as under :

| Sr. No. | Period                         | Income as per Work Order/ Income Ledger (in Rs.) | Value declared in ST-3 returns (in Rs.) | Income as per 26AS (in Rs.) | Income shown in Balance Sheet (in Rs.) |
|---------|--------------------------------|--|---|-----------------------------|--|
| 1       | April-2015 to May-2015         | 14,438/-   | Not Filed                               | 4,51,00,469/-               | 4,51,67,016/-                          |
| 2       | June-2015                      | 97,08,929/-                                      |   |                             |  |
| 3       | July-2015 to Sept.2015         | 1,88,72,112/-                                    |   |                             |  |
| 4       | Oct.2015 to 14.11.2015         | 7,78,514/-                                       |   |                             |  |
| 5       | 15.11.2015 to 31.12.2015       | 5,80,944/-                                       |   |                             |  |
| 6       | Jan-2016 to Mar-2016           | 1,52,12,079/-                                    |   |                             |  |
|         | Total -F.Y.2015-16             | 4,51,67,016/-                                    |   | 4,51,00,469/-               | 4,51,67,016/-                          |
| 7       | April-2016 to May-2016         | 1,28,81,664/-                                    | Not Filed                               | 9,11,51,358/-               | 10,32,05,117/-                         |
| 8       | June-2016                      | 1,03,99,949/-                                    |   |                             |  |
| 9       | July-2016 to Sept.2016         | 2,42,33,926/-                                    |   |                             |  |
| 10      | Oct.2016 to Dec.2016           | 91,43,850/-                                      |   |                             |  |
| 11      | Jan-2017 to Mar-2017           | 4,65,45,728/-                                    |   |                             |  |
|         | Total-F.Y-2016-17              | 10,32,05,117/-                                   |   | 9,11,51,358/-               | 10,32,05,117/-                         |
| 12      | April-2017 to June-2017        | 1,00,98,707/-                                    | Not Filed                               | NA                          | NA                                     |
|         | Total-2017-18 (upto June-2017) | 1,00,98,707/-                                    |   |                             |  |
|         | Grand Total                    | 15,84,70,840/-                                   |   | 13,62,51,827/-              | 14,83,72,133/-                         |

2.3 It was found that some of the work orders were taxable in terms of Notification No. 06/2015 – ST dated 01.03.2015 for the F.Y. 2015-16. The service tax liability of the appellant was arrived at by taking the contract income ascertained as per Income Ledger and Balance Sheets for the period from April 2015 to June 2017, being higher side of gross value shown thereunder as detailed in table supra. The total Service Tax liability of the appellant for the



period F.Y. 2015-16 to F.Y. 2017-18 (Upto June 2017) was ascertained as per details given below :-

(Amount in Rs.)

| Sr. No. | Period                           | Gross Value         | Exempted Value     | Taxable Value      | Abated Value       | Net Taxable Value  | ST inclusive Cess | ST already paid | ST to be paid    |
|---------|----------------------------------|---------------------|--------------------|--------------------|--------------------|--------------------|-------------------|-----------------|------------------|
| 1       | April 2015 to May 2015           | 14,438              | 14,438             | 0                  | 0                  | 0                  | 0                 | 0               | 0                |
| 2       | Jun-15                           | 97,08,929           | 97,08,929          | 0                  |                    |                    |                   |                 |                  |
| 3       | July 2015 to Sept 2015           | 18872112            | 1,88,12,577        | 59,535             | 35,721             | 23,814             | 3,334             | 0               | 3,334            |
| 4       | Oct 2015 to 14 <sup>th</sup> Nov | 7,78,514            | 7,78,514           | 0                  | 0                  | 0                  | 0                 | 0               | 0                |
| 5       | 15.11.2015 to 31.12.2015         | 5,80,944            | 5,80,944           | 0                  |                    |                    |                   |                 |                  |
| 6       | Jan 2016 to Mar 2016             | 1,52,12,079         | 1,36,88,912        | 15,23,167          | 9,13,900           | 6,09,267           | 88,344            | 0               | 88,344           |
|         | <b>Total</b>                     | <b>4,51,67,016</b>  | <b>4,35,84,314</b> | <b>15,82,702</b>   | <b>9,49,621</b>    | <b>6,33,081</b>    | <b>91,678</b>     | <b>0</b>        | <b>91,678</b>    |
| 7       | April 2016 to May 2016           | 1,28,81,664         | 0                  | 1,28,81,664        | 77,28,998          | 51,52,666          | 7,47,137          | 0               | 7,47,137         |
| 8       | Jun-16                           | 10399949            | 10399949           | 0                  |                    |                    |                   |                 |                  |
| 9       | July 2016 to Sept 2016           | 2,42,33,926         | 1,50,02,568        | 92,31,358          | 55,38,815          | 36,92,543          | 5,53,881          | 0               | 5,53,881         |
| 10      | Oct 2016 to Dec 2016             | 91,43,850           | 19,91,868          | 71,51,982          | 42,91,189          | 28,60,793          | 4,29,119          | 0               | 4,29,119         |
| 11      | Jan 2017 to Mar 2017             | 46,54,578           | 1,71,57,367        | 2,93,88,361        | 1,76,33,017        | 1,17,55,344        | 17,63,302         | 9,04,106        | 8,59,196         |
|         | <b>Total</b>                     | <b>10,32,05,117</b> | <b>4,45,51,752</b> | <b>8,56,53,365</b> | <b>3,51,92,019</b> | <b>2,34,61,346</b> | <b>34,93,439</b>  | <b>9,04,106</b> | <b>25,89,333</b> |
| 12      | April 2017 to June 2017          | 1,00,98,707         | 0                  | 1,00,98,707        | 60,59,224          | 40,39,483          | 6,05,922          | 0               | 6,05,922         |
|         | <b>Total</b>                     | <b>1,00,98,707</b>  | <b>0</b>           | <b>1,00,98,707</b> | <b>60,59,224</b>   | <b>40,39,483</b>   | <b>6,05,922</b>   | <b>0</b>        | <b>6,05,922</b>  |
|         | <b>Grand Total</b>               | <b>15,84,70,840</b> | <b>8,81,36,066</b> | <b>7,03,34,774</b> | <b>4,22,00,864</b> | <b>2,81,33,910</b> | <b>41,91,039</b>  | <b>9,04,106</b> | <b>32,86,933</b> |

3. The appellant was issued Show Cause Notice (SCN) F.No. IV/16-07/DGGI/VAPI/2018-19 dated 29.12.2020 upon completion of investigation,

wherein it was proposed to :

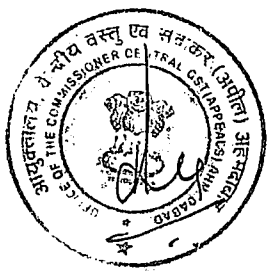


- for demand and recovery of Service Tax (including Cesses) amounting to **Rs. 41,91,039/-** under proviso to Section 73(1) of the Finance Act,1994 (F.A,1994) along with interest and Section 75 of the Finance Act, 1994 read with Section 174 of the Central Goods & Services Tax Act, 2017.
- The Service Tax amount of Rs. 9,04,106/- already paid by the appellant was proposed to be appropriated against their service tax liability.
- Imposition of penalty under Section 77(1)(c) and Section 78 of the Finance Act, 1994 read with Section 174 of the Central Goods & Services Tax Act, 2017.
- Imposition of penalty under Rule 7C of the Service Tax Rules, 1994 (STR, 1994).

4. The SCN was adjudicated vide the impugned order whereby the adjudicating authority confirmed the demand of service tax alongwith interest and imposed penalties as proposed in the SCN.

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

- a) They are eligible for the exemption specified in Notification No. 25/2012 - ST dated 20.06.2012. They are engaged in providing services to Government or Government Authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure meant predominantly for use other than for commerce, industry or any other business & profession, a civil structure used for educational or clinical purpose and a residential complex meant for self-use or the use of the employees.
- b) They claimed exemption under the Entry No. 12(a), (c) & (f) of Mega Exemption Notification No. 25/2012 - ST dated 20.06.2012. But the said entry was omitted by Notification No. 06/2015-ST dated 01.03.2015 and hence the mentioned services provided to the Government became taxable w.e.f. 1st April, 2015. However, vide Notification No. 09/2016 – STdated 01.03.2016, Government restored exemption relating to those services, which were made taxable through Notification No. 06/2015-ST dated



01.03.2015. Relevant portion of the Notification No.09/2016 -ST dated 01.03.2016 is reproduced below:

*"12A. 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 structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment; or*

*(c) 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;*

*under a contract which had been entered into prior to the 1<sup>st</sup> March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date:*

*provided that nothing contained in this entry shall apply on or after the 1<sup>st</sup> April, 2020;";*

c) The details of disputed contracts were tabulated as under :

| Name of Authority                | Work description                             | Exemption entry of Notification. |
|----------------------------------|--|----------------------------------|
| R&B Division, Patan              | Repairing of Rest House @ Patan              | Entry No. 12A(a)                 |
| Project Implementation Unit      | Construction of Residential Quarter          | Entry No. 12A(c)                 |
| Project Implementation Unit      | Hospital building work                       | Entry No. 12A(b)                 |
| Planning Department, Gandhinagar | Construction of Building, Compound Wall etc. | Entry No. 12A(a)                 |

d). They had undertaken above work in F. Y. 2015-16 and F. Y. 2016-17 for which the contract was awarded well before the amendment of exemption entry notified by Government vide Notification No. 06/2015 - ST dated 01.03.2015. On referring the copy of work orders, it was found that, although the date of execution of work orders were during F.Y. 2015-16 and F.Y. 2016-17 however, these contracts were entered into, before the specified period. By referring to the work orders specifications, it can be confirmed that the contract has been executed in the year 2014-15 however, work has been executed by them in the year 2015-16 and 2016-17.

e) the adjudicating authority had considered the basis of Notification No. 06/2015 – ST dated 01.03.2015; where exemption was withdrawn, but the





authority has overlooked the underlying contracts discussed above which were exempted by virtue of Notification No. 09/2016-ST dated 01.03.2016 and the Conditions specified in the notification were fulfilled by appellant and hence they stand eligible for the exemption.

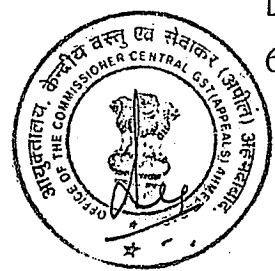
f) They further contended that, as per Section 67(2) of the Finance Act, 1994, where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to gross amount charged. They relied on the following citations :

- Commissioner of Central Excise & Customs, Patna Vs. M/S Advantage Media Consultant & Anr. 2008 (10) TMI 570- SC.
- Commissioner of Service Tax, Mumbai-I Vs. Allied Aviation Ltd. 2017 (4) TMI 438 - CESTAT Mumbai;
- Commissioner of Central Excise, Delhi Vs. Maruti Udyog Ltd. [2012 (141) ELT 3 (SC)]

6. Personal hearing in the matter was held on 23.11.2022. Ms. Foram Dhruv and Ms. Bhagyashree Dave, both Chartered Accountants, appeared on behalf of the appellant. They re-iterated the submissions made in appeal memorandum.

7. I have carefully gone through the facts of the case available on record, grounds of appeal in the appeal memorandum and the impugned order passed by the adjudicating authority. The issue before me for decision is whether the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, confirming the demand of service tax amounting to Rs. 41,91,039/- under proviso to Section 73 (1) of Finance Act, 1994 by invoking extended period of limitation alongwith interest, and imposing penalties under Section 77 and Section 78 of the Finance Act, 1994, is legal and proper or otherwise. The demand pertains to the period F.Y. 2015-16 and F.Y. 2016-17.

8. It is observed that officers of DGGI, Vapi had booked a case against the appellant as exemption granted to the services provided to the Govt., which were earlier exempted by virtue of Notification No.25/2012-ST dated 20.06.2012 [Entry No.12, items (a), (c) and (f)], were withdrawn vide Notification No. 6/2015-S. Tax dated 01.03.2015 and hence they became taxable services w.e.f.



01.04.2015. Further, amendment were brought vide Notification No. 9/2016 – ST dated 1<sup>st</sup> March, 2016 whereby services provided under contracts entered in to before 1.3.2015 were only covered under the exemption. Shri Rakesh M Patel, Proprietor of the appellat firm, has in his statement recorded on 23.12.2020 agreed to the service tax liability quantified by the officers of DGGI and made payment of an amount of Rs. 9,04,106/- towards their service tax liability vide GAR 7 Challan Nos. 50069 dated 27.04.2017 and 55678 dated 05.07.2017.

8.1. It is further observed that the adjudicating authority, at Para 22 of the impugned order, examined the Works Contract (6 in nos.) and had concluded in Para 23 of the impugned order that the appellat had entered into these work orders after 01.03.2015 and consequently, they are not liable for exemption under Notification No. 09/2016 – ST dated 01.03.2016. It has been also recorded that the appellat had not submitted details of work orders in respect of “Repairing of Rest House at Patan” and “Construction of building compound wall at Gandhinagar” hence he had considered the date mentioned in the SCN in respect of these work orders.

8.2. In order to examine the case in proper perspective, the relevant Entry No.12 of Notification No. 25/2012-ST dated 20.06.2012 is reproduced below:

*“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 –*

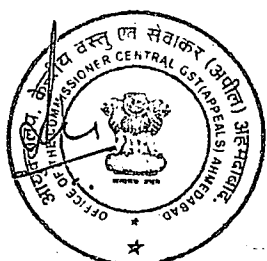
*(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;*

*(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;”*

8.3. Further, vide Notification No. 06/2015 – ST dated 01.03.2015, in entry 12 of the Notification No. 25/2012 - ST, items (a), (c) and (f) were omitted. Thereafter, vide Notification No. 09/2016 – ST dated 01.03.2016 following changes were made in the Mega Exemption Notification:

*“(iv) after entry 12, with effect from the 1<sup>st</sup> March, 2016, the following entry shall be inserted, namely- “12A. 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 structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or*

*(c) 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;*

*under a contract which had been entered into prior to the 1<sup>st</sup> March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date:*

*provided that nothing contained in this entry shall apply on or after the 1<sup>st</sup> April, 2020;”*

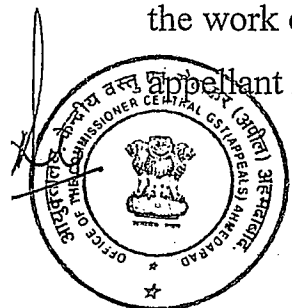
8.4. It is observed from the legal provisions above that the exemptions under Serial No. 12 of Mega Exemption Notification under clauses (a), (c) and (f) were available for contracts which were entered into prior to the 1<sup>st</sup> March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date. It is observed that the appellant has not submitted any documentary evidences to prove that the work orders were entered into prior to 01.03.2015, so as to be eligible for exemption. The adjudicating authority has, on the basis of documents submitted by the appellant, arrived at the conclusion that they were for a period after 01.03.2015 and has accordingly denied the exemption claimed by them. I have gone through the copies of work orders (4 in nos.) submitted by the appellant along with appeal memorandum and find that they all pertain to



period December, 2015 to February, 2016. Hence, I do not find any evidence available on record to arrive at a finding other than those in the impugned order. Accordingly, I find that the appellant have not been able to substantiate their claim for exemption in their appeal memorandum and that the demand confirmed vide the impugned order is held to be legal and proper. Further, once the demand is confirmed under Section 73 of the Finance Act, 1994, it is liable to be paid along with interest. The appellant are held to be liable to pay the amount confirmed along with interest under Section 75 of the Finance Act, 1994.

8.5. As regards the invocation of extended period of limitation as well as imposition of penalty under Section 77 and 78 of the Finance Act, 1994, I find that the adjudicating authority has discussed in details these aspects. Although, the appellant was registered with the department they had not filed their stipulated ST-3 returns for the relevant period. The changes brought about in the Exemption Notification was available in public domain. It is observed from the copy of the work orders (four in nos.) submitted alongwith the appeal memorandum that they specifically mention "The Tender cost includes service tax as per special condition and no separate claim or reimbursement there on shall be entertained." Hence, the appellant was aware of the service tax liability in respect of these work orders. In the era of self-assessment, it was the appellant's responsibility to assess their service tax liability and inform the department by filing ST-3 Returns after obtaining registration. They failed to do so and hence the aspect of mens rea for non-payment of service tax is apparent. Hence, I uphold imposition of penalty under Sections 77 and 78 of the Finance Act, 1994.

9. It is further observed that the appellant has claimed cum-duty benefit under Section 67 (2) of the Finance Act, 1994. I find that the appellant had taken this plea before the adjudicating authority but the impugned order is silent on this aspect. It is observed from the copy of the work orders (four in nos.) submitted alongwith the appeal memorandum that they specifically mention "The Tender cost includes service tax as per special condition and no separate claim or reimbursement there on shall be entertained." Hence, it is apparent that the work orders received by the appellant included service tax element also. The appellant has, however, not submitted the Invoices/Bills in respect of these work



orders with the appeal memorandum. Their claim cannot be considered for want of these documents. Therefore, it would be in the interest of justice that the matter be remanded back to the adjudicating authority, who shall examine this aspect and arrive at correct amount of service tax payable. The appellant is also directed to submit the necessary documents before the adjudicating authority to arrive at correct assessment.

10. In view of the discussions made above, I uphold the confirmation of demand vide the impugned order amounting to Rs.41,91,039/- along with interest and penalty. As regards the issue of extending cum-duty benefit to the appellant under Section 67 (2) of the Finance Act, 1994, I remand the case back to the adjudicating authority for adjudication of the limited purpose of cum-duty benefit under Section 67 (2) of the Finance Act, 1994 on merits, following the principles of natural justice.

11. 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*  
14<sup>th</sup> December, 2022  
(AKHILESH KUMAR)  
Commissioner (Appeals)  
Date: 14<sup>th</sup> December, 2022

Attested

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



To,

By Regd. Post A. D

M/s. Coincide Infrastructure,  
01-A, Harkor Nagar Society 2,  
Behind-Adarsh High School,  
Patan (N.G.) - 384265

Copy to :

1. The Principal Chief Commissioner, CGST and Central Excise,  
Ahmedabad.
2. The Principal Commissioner, CGST and Central Excise, Gandhinagar.

3. The Deputy Commissioner, CGST & Central Excise, Division - Palanpur.
4. The Deputy/Asstt. Commissioner (Systems), CGST Appeals,  
Ahmedabad.
5. Guard file
6. PA File

