



सत्यमेव जयते

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

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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STD/197/2022-APPEAL / 1167-31
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-016/2023-24 and 28.04.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	09.05.2023
(ङ)	Arising out of Order-In-Original No. 12/ST/OA/ADJ/2022-23 dated 20.05.2022 passed by the Assistant Commissioner, CGST & CE, 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 Ariel Consultancy (PAN-AAOFA0483F), F-4, Balaji Complex, Malpur Road, Modasa, Dist- Sabarkantha, Gujarat.

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।

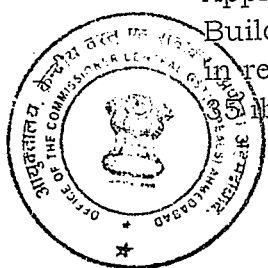
Any person aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way.

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-35A of the CEA 1944 :-



(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 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 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: 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 रु 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 अपील 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 - Himmatnagar, Commissionerate - Gandhinagar (hereinafter referred to as the 'Appellant Department'), in pursuance of the Review Order No. 09/2022-23 dated 25.08.2022 issued under Section 84 of the Finance Act, 1994 from F.No. GEXCOM/REV/ST/OIO/17493/2022-REV-O/o COMMR-CGST-GANDHINAGAR by the Commissioner, CGST & Central Excise, Gandhinagar, has filed the present appeal against the Order-in-Original No. 12/ST/OA/ADJ/2022-23 dated 20.05.2022 (hereinafter referred to as the "impugned order") passed by the Assistant Commissioner, CGST Division - Himmatnagar, Commissionerate - Gandhinagar (hereinafter referred to as the "adjudicating authority") in the matter of M/s. Aerial Consultancy, F-4, Balaji Complex, Malpur Road, Modasa - 383315, Dist. Sabarkantha, Gujarat (hereinafter referred to as the "respondent").

2. Facts of the case, in brief, are that the respondent were providing services falling under the category of 'Consulting Engineer Services' and holding Service Tax Registration No. AAOFA0483FST001. An analysis of the 'Sales/Gross Receipts from Services (Value as per ITR)', the 'Total Amount paid/credited under Section 194C, 194H, 194I, 194J' and the 'Gross value of Services Provided' was undertaken by the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 and F.Y. 2016-17, and the details of the said analysis was shared with the Central Board of Indirect Taxes (CBIC). On perusal of the said analysis, it was observed that the gross value of Sale of Services declared in the ST-3 returns filed with the Service Tax department by the respondent was less than the gross value of sale of services declared in the Income Tax Returns. It appeared to the jurisdictional officers that the respondent had misdeclared the gross value of Sale of Services in the Service Tax Returns (ST-3) and short paid/ not paid the applicable Service Tax during the period F.Y. 2015-16 and F.Y. 2016-17. Letters were issued to the respondent by the jurisdictional officers requesting to provide relevant documents i.e Balance Sheet, Profit & Loss Account, Income Tax Returns, Form 26AS, Service Income, Service Tax Ledger and ST-3 Returns for the F.Y. 2015-16 and F.Y. 2016-17. However, they did not respond. It further, 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 F.Y. 2015-16 and F.Y. 2016-17 as below:

Financial Year (F.Y.)	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.)	Taxable Value as per TDS 9including 194C,194IA, 194Ib,194J, 194H) (in Rs.)	Higher Difference between IT Data i.e Sales from Services and ST-3 Returns (in Rs.)	Rate of Service Tax payable	Amount of Service Tax payable (in Rs.)
2015-16	36,02,110/-	28,95,670/-	52,05,208/-	23,09,538/-	14.5%	3,34,883/-
2016-17	35,04,907/-	30,38,724/-	36,86,657/-	6,47,933/-	15%	97,190/-
					Total	4,32,073/-

3. Show Cause Notice was issued to the respondent under F.No. IV/15-35/CGST-HMT/O&A/20-21 dated. 03.07.2020 (in short SCN) vide which it was proposed to demand and recover Service Tax amounting to Rs 4,32,073/- under proviso to Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75. Penalty were proposed under Section 78 of the Finance Act, 1994 (FA, 1994).

4. The SCN was adjudicated vide the impugned order, wherein the demand of Service Tax amounting to Rs.785/- was confirmed alongwith interest for the period F.Y. 2016-17 and demand amounting to Rs. 4,31,288/- was dropped. Penalty amounting to Rs. 785/- was imposed under section 78(1) of the Finance Act, 1994 with an option for reduced penalty under clause (ii) of the second proviso.

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

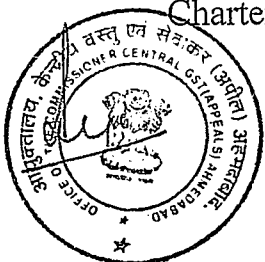
5.1 The adjudicating authority has dropped the demand holding that every activity related to canal, dam or other irrigation works provided to Government, a local authority or a governmental authority is exempt including consulting engineer services vide clause 12 (d) of Notification No. 25/2012-ST dated 20.06.2012. However, as per clause 12(d), only the services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of canal, dam or other irrigation works, to

the Government, a local authority or a governmental authority are exempted. The respondents have provided "Consulting Engineer Services", which are not covered under said exemption entry. The adjudicating authority has wrongly interpreted said exemption entry in extending the exemption and dropping the demand.

5.2 Documents submitted by the respondent reveal that the income shown in Profit & Loss A/C are as Consultancy Income. Running Account Bill (RA Bill) for Agreement No. B-1/43 of FY. 2014-15 shows name of work as Consultancy work for initial and final levels of Deepening tank work. In their ST-03 Returns also the taxable service shown is Engineer Service. Agreement No. B/6 2015-16 shows the work as below Surveying and leveling but total station for initial cross section of canal at 30mt interval along centre line and reading up to 15m on both sides at 5mt interval including chaining, ranging demarcation, jungle cutting etc. and Charges for preparing cross sections and longitudinal section, contour plan in duplicate in hard and soft copy including all material charges. Another Bill No. 1/43 of 2014-15 item of work are mentioned as Monitoring geometric control and taking initial and final levels including fixing permanent temporary bench marks plotting of cross sections earthwork calculation, carrying out technical quantity and quality assurance for the work of deepening tanks & enhance the capacity of natural drain at upstream of existing checkdam work of Sabarkantha district including photography, videography of work initial and final CD/DVD report in 3 sets in soft and hard computerized copies etc. From the above, it appears that the respondent are providing services by way of Consultancy to Government for Dam, Canal & Irrigation work, which is not exempted vide Entry No. 12(d) of said Mega Exemption Notification.

5.3 The Consulting Engineer services provided by the respondents is nowhere out of purview of service tax under any of exemption Notification/Circular. The adjudicating authority appears to have not examined the factual position of the issue involved in the case and dropped the demand. The amount of Rs. 5,228/- has been considered as taxable value and confirmed the demand of Rs. 785/- only. The remaining demand has been dropped on incorrect application of Notification and provisions of the law.

6. Personal Hearing in the case was held on 15.03.2023. Shri Punit Prajapati, Chartered Accountant, appeared on behalf of the respondent for hearing. He stated



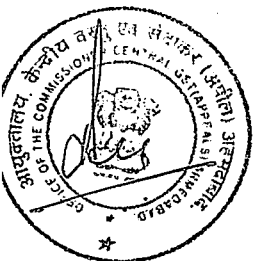
that the respondent firm has also done work of bore drilling as well as levelling. He submitted two documents/agreements in support of above contention and further informed that they would submit a written submission alongwith relevant documents.

6.1 A cross-objection to the appeal was filed by the respondent on 10.04.2023 wherein they submitted that:

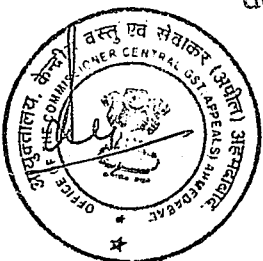
➤ They were engaged in providing Consultancy Engineering Services in Irrigation Project division of Government of Gujarat and others and are registered with the service tax department. They have filed their ST-3 Returns on time and duly discharged their Service Tax liabilities.

○ ➤ Mostly they have provided services to Government and as a part of their work they have been carrying out Ground Survey and Investigation work for hydraulic structure on water bodies like large check dam, river etc. and all related experimental testing and sending samples to the government and alignment work from the central line of the river. These services as part and parcel of 'Construction Completion' work of irrigation projects, which are exempted by virtue of Entry No. 12(d) of Notification No. 25/2012-ST, dated 20.06.2012.

○ ➤ Before starting of construction activity of any irrigation project, technical survey, experimental testing etc. are must and without these construction work cannot begin. Similarly, works of alignment of Check dams, rivers from all sides are also important and without these works construction work is not considered to be complete. These engineering services are nothing but part of construction activity and are inseparable in nature. As an example they have sighted the work of carrying out white markings on national/state highway projects, which are an essential part of completion of the Road Construction, but, it does not involve use of asphalt or any other road building material. Similarly, they have provided engineering services by way of construction and completion of irrigation projects and they are eligible for exemption from service tax and the adjudicating authority has correctly allowed the exemption.



- Department has appealed by raising doubts that 'Consulting Engineer Services for canal, dam and irrigation work' provided by the respondent are not covered within the scope of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of canal, dam or other irrigation works, and therefore they are not eligible for exemption under Entry 12(d) of Mega Exemption Notification No. 25/2012-ST.
- Vide Serial No. 6 of Para 3 of the Circular No. 123/5/2010 dated 24.05.2010, CBIC has clarified that laying of electric cables beyond the distribution point of residential or commercial localities/complexes is covered under commercial or residential construction or 'construction of complex service'[section 65 (105) (zzq)/(zzzh)], as the case may be. Applying the same ratio, services of Consulting Engineer Services, which are essential and integral part of construction of canal, dam or other irrigation work, should be considered as 'Construction' of such canal, dam or other irrigation work and the adjudicating authority has correctly allowed the exemption and the grounds of appeal of the department is against the departmental clarification.
- In support of their contentions they relied on the decision of CESTAT, Allahabad in the case of Quest Engineers & Consultant Pvt. Ltd. Vs Commissioner, CGST & Central Excise – 2022 (58) GSTL 345 (Tri.All).
- They had submitted copies of work orders, RA Bills, work completion certificates, payment receipt details, etc. before the adjudicating authority. Alongwith their submission, they had submitted these documents also. They also submitted tabulated details of the work orders and RA Bills in respect of the services provided by them during the relevant period which shows that during F.Y. 2015-16 they had carried out works amounting to Rs. 23,10,221/- and during F.Y. 2016-17 they had carried out works amounting to Rs. 6,42,701/- from Irrigation department of various Government offices.
- As they have filed their ST-3 Returns within time and also discharged their Service Tax liabilities, extended period cannot be invoked for confirming the demand.

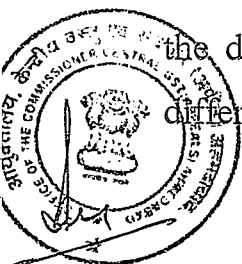


- The SCN was issued entirely on the basis of Income Tax returns and data from 26AS, hence the same is required to be quashed. In support they relied on the decision of Hon'ble Bombay High Court in the case of Amrish Rameshchandra Shah Vs Union of India and others (TS-77-HC-2021 Bom-ST) wherein the Hon'ble Court had set aside the SCN dated 31.12.2020.
- They also relied on the following decisions :
 - Decision of the Hon'ble Tribunal, Allahabad in the case of Sharma Fabricators & Erectors Pvt.Ltd reported as 2017 (5) GSTL 96 (Tri.All).
 - Kush Constructions Vs CGST NACIN – 2019 (24) GSTL 606 (Tri.All).
 - The Hon'ble Supreme Court had upheld the decision of the Hon'ble Tribunal in the case of Alpa Management Consultants P.Ltd Vs CST – 2007 (6) STR 181 (Tri.Bang.).
 - Kirloskar Oil Engines Ltd. Vs CCE – 2004 (178) ELT 998.
 - Free Look Outdoor Advertising Vs CCE – 2007 (6) STR 153 (Tri.Bang.)

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. 4,31,288 /- 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. 2015-16 and F.Y. 2016-17.

8. During the period, the respondents have provided service to various Government departments and claimed exemption under clause 12(d) of Notification No. 25/2012-ST dated 20.06.2012. The only issue disputed by the appellant department is whether the 'Consulting Engineer Services' provided by the respondents are covered under the definition of the exempted services as mentioned in clause 12(d) of Notification No. 25/2012-ST dated 20.06.2012.

9. I find that the SCN in the case was issued to the respondent on the basis of data received from Income Tax department. The respondents are registered with the department and the demand was raised vide the SCN only 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' while calculating the demand of Service Tax, without carrying out any verification of the facts. 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.

10. It is observed from the case records that during the F.Y. 2015-16 and F.Y. 2016-17, the respondent have provided services valued at Rs. 52,05,208/- and Rs. 36,86,657/- respectively. Out of the said amounts, the department has considered the taxable value declared in the ST-3 Returns and arrived at a conclusion that the differential taxable value amounting to Rs. 23,09,538/- and Rs. 6,47,933/- were suppressed by the respondent during the period F.Y. 2015-16 and F.Y. 2016-17 respectively. This amount is not disputed by the respondent. On the basis of the documents produced by the respondent, the adjudicating authority has dropped the demand of service tax amounting to Rs. 4,31,288/- considering the claim of the respondent that 'Consulting Engineer Services' to Government for dam, canal & irrigation work provided by them amounting to Rs. 29,52,243/- were exempted under Clause 12 (d) of the Notification No. 25/2012-ST dated 20.06.2012.

11. 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 (d) of the Notification No. 25/2012-ST dated 20.06.2012 considering the 'Consulting Engineer Services' provided by the respondents are not covered within the scope of 'services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance,



renovation, or alteration of canal, dam or other irrigation works, to the Government, a local authority or a governmental authority'. Therefore, the benefit of exemption has been wrongly extended by the adjudicating authority.

11.1 I find it relevant to refer to the provisions of exemption granted vide Clause 12 (d) 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

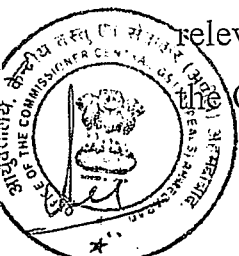
(i) water supply

(ii) water treatment, or

(iii) sewerage treatment or disposal; or

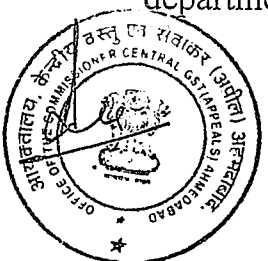
(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act;...

11.2 From the above, I find that the Clause 12 (d) 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 of canal, dam or other irrigation works" when provided to the 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 Irrigation department of the Government of Gujarat. It is further observed that the adjudicating authority, at



Para 10, Para 15.5 and Para 15.6 of the impugned order, has recorded that the respondents have submitted copies of Form 26 AS for the F.Y. 2015-16 and F.Y. 2016-17, Copies of IT Returns for the F.Y. 2015-16 and F.Y. 2016-17, Financial Statements for the F.Y. 2015-16 and F.Y. 2016-17, copies of Bills, Tender document etc. On the basis of these documents the adjudicating authority has discussed in the impugned order and concluded that the respondents have provided services amounting to taxable value of Rs. 23,10,221/- during the F.Y. 2015-16 to irrigation divisions of various districts of Government of Gujarat viz., Dahod, Dharoi and Modasa and during the F.Y. 2016-17 they have provided services amounting to Rs. 6,47,929/- to irrigation divisions of various districts of Government of Gujarat viz., Modasa, Himmatnagar and Bhavnagar. Further, regarding the nature of services rendered by the respondent, he has observed that it is apparent from the Bills and Tender documents/work orders that the same are covered within the scope of the *'services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of canal, dam or other irrigation works, to the Government, a local authority or a governmental authority'* and are, therefore, eligible for exemption in terms of Clause 12 (d) of the Notification No. 25/2012-ST dated 20.06.2012 and hence, not liable to service tax.

12. I find that, with the implementation of the Negative list regime in Service Tax with effect from 01.07.2012, the services provided by 'Consulting Engineers' was not separately defined and the term 'Services' were broadened to include all such services which are provided for consideration and further detailed interpretations were given as per Section 66B of the FA, 1994. The documents submitted by the respondents further confirm that they have provided services pertaining to more than one discipline of engineering and going by the erstwhile definitions, the services are categorized under 'Consultant Engineer Services'. It is also evident that the services provided by them are an integral part of the project and are essential for completion of any 'Construction work' related to the entire project of Irrigation canal, dam, check dam on rivers/water bodies etc. As the project pertains to the Government of Gujarat it merits exemption as 'Services provided to the Government'. Here it is noteworthy to mention that the respondent has contended that all the services provided by them to the Government departments are integrated in the complete work of Irrigation Department for



development/ construction of Canals, Dams, Checkdams and their hydraulic structures. Hence, it is undisputed that the services provided by the respondent are a part of larger project of the Irrigation project of the Government department. Here, I find it relevant to refer to the decision of the Hon'ble CESTAT, Allahabad in the case of *M/s Quest Engineers & Consultant Pvt. Ltd., Vs Commissioner, Central Goods & Respondent Service Tax and Central Excise in Service Tax Appeal No. 70616 of 2019 reported as 2022 (58) GSTL 345 (Tri. – All.)*, wherein the Hon'ble Tribunal held that :

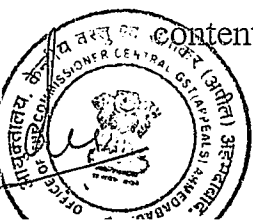
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13. We further hold that the extended period of limitation is not available to Revenue under the facts and circumstances. We further hold that the appellant is entitled to exemption under the Notification No. 25/2012-ST under Sl. No. 13(a) of the said notification for providing consulting engineer services in the matter of road construction. When road construction is exempt, every activity is exempt relating to the road construction including consulting engineer services..

...

The appellant department has also admitted the fact that the respondents have provided 'Consultant Engineer Services for canal and irrigation work'. These facts are also established from the documents submitted by the respondent. Therefore, the services provided by them are duly covered under the scope of 'services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of canal, dam or other irrigation works, to the Government, a local authority or a governmental authority' and merit exemption under Clause 12 (d) of the Notification No. 25/2012-ST dated 20.06.2012.

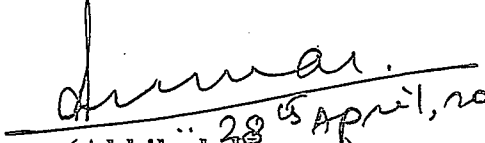
12. In view of the discussions made in the foregoing paragraph and the judicial pronouncement of the Tribunal, I find that once the department is in agreement of the fact that the services rendered by the respondents are to a Government department, which is otherwise exempted, the department appeal as regards denial of exemption to the respondent on technical grounds relying on provisions of consultant engineering services prevalent in pre-negative list regime are legally unsustainable and liable to be set aside. The definition of "service" in the negative list regime has been expanded to include various services, which were hitherto not taxable. Further, the exemption has been provided by referring to services and not any particular service. The scope of exemption has to be understood by reading the exemption notification in totality and should be strictly construed based on the contents of exemption notification. 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 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.

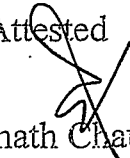
13. In view of the above, the appeal filed by the Appellant Department against the impugned order is dismissed being devoid of merits.

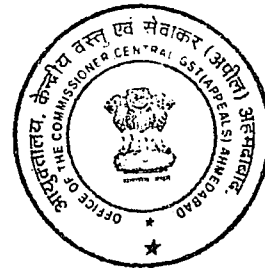
14. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the department stands disposed of in above terms.


(Akhilesh Kumar)
Commissioner (Appeals)

Date: 28th April, 2023

Attested


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



By Regd. Post A. D

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

APPELLANT

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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