आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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सत्यमेव जयते

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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/2367/2022-APPEAL / 3139-W3
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-050/2023-24 and 28.06.2023
(ग)	पारित किया गया / Passed By	श्री शिव प्रताप सिंह, आयुक्त (अपील) Shri Shiv Pratap Singh, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	10.07.2023
(ङ)	Arising out of Order-In-Original No. 18/AC/DEM/MEH/ST/Kiritgiri Natvargiri/2022-23 dated 19.05.2022 passed by Assistant Commissioner, CGST, Division-Mehsana, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Shri Kiritgiri Natvargiri Goswami, AT-B/H High School, Kherva,Mehsana, Gujarat - 382711

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 अतन 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 मे 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 मामलें 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 केडिट 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 दिनाँक 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. Registar 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 हैं।

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 राशिय;
(3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना मेंए 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 filed by Shri Kiritgiri Natvargiri Goswami, Proprietor of M/s Erveen Ready-mix Construction, At-Behind High School, Kherva, Dist.-Mehsana, Gujarat - 382711 [hereinafter referred to as the appellant] against OIO No. 18/AC/DEM/MEH/ST/Kiritgiri Natvargiri/2022-23 dated 19.05.2022 [hereinafter referred to as the impugned order] passed by Assistant Commissioner, Central GST, Division : Mehsana, Commissionerate : Gandhinagar [hereinafter referred to as the adjudicating authority].

2. Briefly stated, the facts of the case are that the appellant was providing services as Contractor and having PAN No. AFLPG4587J. They were not registered under Service Tax. The Income tax department had provided data/details of various Income Tax Assessees who have declared 'Income by providing services' in their Income Tax Returns for the period F.Y. 2014-15 to F.Y. 2017-18 (upto June-2017). These assesses had classified their services under various service sectors e.g. Contractors, I.T. enabled services, Professionals, Software Development, Commission Agent and Commercial Training or Coaching Centre etc. In order to verify whether the appellant were liable to pay Service Tax under the Finance Act, 1994 and if so, to determine the liability of Service Tax, letter F.No. IV/16-29/PI/Un-R/2020-21/Gr.III dated 26.11.2020 was issued to the appellant requesting them to furnish copies of I.T Returns, Form – 26AS, Balance Sheet (including P&L Account), VAT/Sales Tax Returns, Annual Bank Statement, Contracts/Agreements entered into with persons to whom services were provided etc. for the period F.Y. 2014-15, F.Y. 2015-16, F.Y. 2016-17 and F.Y. 2017-18 (upto June-2017).

2.1 The appellant replied vide letter dated 18.12.2020 and submitted copies of I.T Returns, Form – 26AS, Balance Sheet (including P&L Account), Contracts/Agreements entered into with persons to whom services were provided during the period F.Y. 2014-15, F.Y. 2015-16, F.Y. 2016-17. From the documents submitted by the appellant, it appeared to the jurisdictional officers that the appellant were engaged in providing services by way of erecting of batching plant and supply of concrete to various contractors, who in turn were executing the work of construction of canal at various sites. The documents also indicated that the appellant were engaged in providing services for Government

work only and had received consideration from various contractors who had deducted TDS, which was reflected in their Form 26AS. The jurisdictional officers further observed that the nature of service provided by the appellant during the period were covered under the definition of 'Service' as defined under Section 65B (44) read with Section 65B (51) of the Finance Act, 1994 and appeared to be taxable.

3. The Service Tax liability of the appellant for the F.Y. 2014-15, F.Y. 2015-16, F.Y. 2016-17, and F.Y. 2017-18 (upto June, 2017) was determined on the basis of Form 26AS and books of accounts maintained for the relevant period. Total service tax liability of Rs. 42,85,982/- was calculated for the period from 01.04.2014 to 30.06.2017 .

4. The appellant were issued a Show Cause Notice vide F. No. GEXCOM/ AE/ VRFN/ TPD/ 27/2020-AE- O/o COMMR- CGST –GANDHINAGAR – Part (I) dated 31.12.2020 (in short 'SCN'), wherein it was proposed as under:

- Demand and recover service tax amounting to Rs. 42,85,982/- under the proviso to Section 73 (1) of the Finance Act, 1994 alongwith Interest under Section 75 of the Finance Act,1994 ;
- Imposition of penalties under Section 77(2) and 78 of the Finance Act, 1994;

5. The Show Cause Notice was adjudicated vide the impugned order wherein it was ordered that :

- the demand of Service Tax amounting to Rs. 42,85,982/- was confirmed under sub-section (2) of Section 73 alongwith interest under Section 75 of the Finance Act,1994.
- Penalty of Rs.10,000/- was imposed under Section 77(2) of the Finance Act,1994;
- Penalty of Rs. 42,85,982/- was imposed under Section 78 of the Finance Act,1994 with option for reduced penalty under clause (ii) of Section 78(1) of the Finance Act, 1994.

6. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have filed the present appeal on following grounds :

- The adjudicating authority has erred in law as well as in facts in declaring the services provided by the appellant as taxable service in terms of clause (f) of Section 66E of the Finance Act, 1994. He has travelled beyond the scope of the SCN, as the Notice had not alleged the Appellant on ground of declared service under Section 66 E (f) of the Finance Act, 1994.

- The activities undertaken by the appellant involved process amounting to manufacture/production of goods and thus falls under the Negative list of services defined under clause (f) Section 66D of the Finance Act,1994.

- As recorded by the adjudicating authority at Para-22 of the impugned order, the Invoices/Bills issued by the appellant were not called for by the adjudicating authority.

- Demand was confirmed under section 73(1) of the Finance Act, 1994 without conducting proper examination of the underlying facts, therefore the demand is not sustainable.

7. Personal Hearing in the case was held on 17.04.2023, Shri Rahul Patel, Chartered Accountant, appeared on behalf of the appellant for the hearing. He submitted a written submission during hearing. He re-iterated the submissions made in the appeal memorandum.

7.1 Vide the additional submission dated 17.04.2023, the appellants have contended as under :

- The SCN issued to the appellant had alleged that the activities carried out by the appellant during the relevant period were covered under 'Service' in terms of Section 66B(44) of the Finance Act, 1994. However, the adjudicating authority has confirmed the demand by considering the activities of the appellant as taxable services in terms of Section 66E(f) of the Finance Act, 1994. Hence, the impugned order has travelled beyond the scope of the SCN and is required to be set aside. They relied on the following decisions :
  - Caprihans India Ltd. Vs CCE – 2015 (325) ELT 632 (SC)
  - CCE Vs Sun Pharmaceuticals Inds. Ltd – 2015 (326) ELT 3 (SC).

- As held by the adjudicating authority that the appellants have given complete plants on hire for temporary use to their clients, in this regard they argued that the plant and machinery being immovable properties and not goods, their transfer would not fall within the scope of clause (f) of Section 66E of the Act.

- From the copy of contracts executed between the appellant and their clients, submitted by them herewith, it emanated that service provided by the appellant was of supply of concrete and not plant and machinery. Hence, these services provided by the client do not fit into the scope of clause (f) of Section 66E of the Finance Act, 1944.

- The consideration received by the appellant from their service receivers were pertaining to the quantum of concrete produced by the plant and not for hiring the plant and the same falls within the scope of Section 66D (f) of the Finance Act, 1994 and is covered under the Negative list.

- The activities undertaken by the appellant were in relation to construction of projects specified in either Sr.No. 12 or 13 of Notification No. 12/2012-ST and accordingly exempted from Service Tax.

- Alongwith their submission, the appellant have submitted copies of the following documents :
  - Copy of the decision of the Hon'ble CESTAT, Kolkata in the case of Commissioner of Service Tax –II, Kolkata Vs Anmol Biscuits Ltd. reported as 2022(62) GSTL 171 (Tri.-Kolkata)
  - Work Order dated 20.04.2014 issued by Radhe Engineers.
  - Work Order dated 19.11.2013 issued by Mass Infrastructure Pvt.Ltd.
  - Work Order dated 22.10.2013 issued by Shiwalay Enterprises.
  - Work Order dated 03.03.2017 issued by Shiwalay Enterprises.
  - Work Order dated 08/11/2016 issued by Bhimji Velji Sorathia Construction Pvt. Ltd.
  - Letter of Intent dated 21.08.2015 issued by L&T Constructions Limited.
  - Work Order dated 14.11.2016 issued by Shiwalay Enterprises.
  - Work Order dated 26.11.2016 issued by Niyati Construction Co.

* Letter of Intent dated 03.04.2014 issued by NCC Limited.
* Amendment letter dated 15.05.2014 for amendment of Work Order dated 17.12.2012 of Isolux Corsan (I) Engineering & Construction Pvt.Ltd. alongwith Bill of Quantity.
* Copies of Invoices/Bills raised by the appellant in favour of various Customers during the period F.Y. 2014-15.

8. On account of change of appellate authority personal hearing in the case was again held on 23.06.2023, Shri Rahul Patel, Chartered Accountant, appeared on behalf of the appellant for the hearing. He re-iterated the submissions made earlier in the appeal memorandum and the additional written submissions made on 17.04.2023. He further submitted that the appellant carried out an activity of manufacturing concrete out of raw materials supplied by the client at client's premises. Such services are in negative list under Section 66 D (f) of the Finance Act, 1994. Therefore, he requested to set aside the order in original. He undertook to submit a copy of ITR, Form 26AS and financial statements within a week.

8.1 The appellants vide e-mail dated 27.06.2023 submitted additional documents in form of copies of Form-26AS for the period F.Y. 2014-15 to F.Y. 2016-17; copies of Profit & Loss Statements for the period F.Y. 2014-15 to F.Y. 2016-17; copies of ITR-3 for the period F.Y. 2014-15 to F.Y. 2016-17.

9. I have gone through the facts of the case, submissions made in the appeal memorandum and oral submissions made during the personal hearing as well as submissions made vide their additional written submission. The issue to be decided in the case is whether the impugned order issued against the appellants, confirming the demand of service tax amounting to Rs. 42,85,982/- alongwith interest and penalties, in the facts and circumstances of the case is legal and proper or otherwise. The demand pertains to the period F.Y. 2014-15 to F.Y. 2017-18 (upto June, 2017).

10. It is observed that the demand in the case was raised on the basis of data received from the Income Tax department. The appellants were not registered with the department. The appellant had submitted documents before the jurisdictional authorities. No efforts were made in order to carry out further

verification and the SCN was issued entirely on the value of income tax data. Hence, the SCN was issued indiscriminately without carrying out the required verification. Further, the appellant had produced various documents before the investigation as well as the adjudicating authority in their defence submission and also during personal hearing. However, the adjudicating authority has passed the impugned order without appreciation of facts available on record. He has overlooked the exact nature of activities undertaken by the appellant during the relevant period. As contended by the appellant it is also observed that the adjudicating authority has travelled beyond the scope of the SCN by taking a recourse to classify the activity of the appellant as 'Taxable Service' under Section 66E(f) of the Finance Act, 1994. Hence, I find that the SCN is vague and the impugned order is legally unsustainable.

10.1 I find it relevant to refer to refer to CBIC Instruction dated 26.10.2021. Para-3 of the said instruction categorically states that :

...

3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. 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 in light of the above instructions, it is found that the adjudicating authority has failed to follow the specific directions issued by the board and passed the impugned order without considering the details submitted by the appellant. Hence, the impugned order is not legally sustainable, being non-speaking order passed in violation of principles of natural justice.

11. As regards merits of the case, I find that the documents submitted by the appellant confirm that during the period F.Y. 2014-15 to F.Y. 2017-18 (upto June, 2017) they were engaged in the business of 'Supply of Ready Mix Concrete (RMC)' to various contractors, i.e M/s Radhe Engineers, Mass Infrastructure Pvt. Ltd., Shiwalay Enterprises, Bhimji Velji Sorathia Construction Pvt. Ltd., L&T Constructions Limited, Niyati Construction Co., NCC Limited , Isolux Corsan (I) Engineering & Construction Pvt. Ltd etc. The work orders/ letter of intent issued by the customers to the appellant clearly mention that they are meant for 'Supply of Ready Mix Concrete'. These Work

Orders also specified the size of 'Batching Plants' required to be installed for manufacture of 'Ready Mix Concrete' at the site of the customer as per their specifications and utilising the raw materials supplied by the customers. Hence, the activities carried out by the appellant in the instant case should be appropriately considered as *'Job-work of conversion of raw materials into Ready Mix Concrete on site'*. M/s Isolux Corsan (I) Engineering & Construction Pvt. Ltd. has mentioned the said description in their Work Order dated 15.05.2014.

11.1 It is also observed that the Customers have quoted rates '@ per Cubic Meters', which apparently refers to the quantum of 'Ready Mix Concrete' received by them from the batching plant installed by the appellant firm. Further, the Invoices/Bills raised by the appellant also confirm the quantity of RMC supplied by them as per the rates agreed upon in the 'Work-orders'. Hence, the activity of the appellants are confirmed as 'Supply of RMC', these facts are undisputed and recorded by the adjudicating authority at Para – 23 of the impugned order.

11.2 It is further observed that the adjudicating authority has recorded at Para – 20 of the impugned order that the Form - 26AS for the relevant period submitted by the appellant confirm that they have received Job-work Income from their customers mentioned supra. Further, he has also agreed that these amounts of Job-work Income was also reflected in the Profit & Loss Account submitted by the appellant.

11.3 It is observed from the documents/Form 26AS submitted by the appellant for the relevant period that they have received amounts under Section 194C of the Income Tax Act, 1961 from various companies/body corporates and applicable amount of TDS has been deducted from the amounts. The year wise details of amounts received under Section 194C of the Income Tax Act, 1961 is tabulated below :

Financial Year	Name of Depositor	Total Amount credited under Section 194C (in Rs.)
F.Y. 2014-15	Radhe Engineers	8,08,045/-
F.Y. 2014-15	Mass Infrastructure Private Limited	14,65,184/-
F.Y. 2014-15	NCC Limited	57,85,989/-
F.Y. 2014-15	Jitendrasinh Bhagvatsinh Rathod	16,32,052/-
F.Y. 2014-15	Isolux Corsan Engineering and Construction	9,67,169/-

	Private Limited	
F.Y. 2015-16	Mass Infrastructure Private Limited	9,30,311/-
F.Y. 2015-16	Jitendrasinh Bhagvatsinh Rathod	10,02,803/-
F.Y. 2015-16	Larsen & Toubro Limited	26,61,929.13/-
F.Y. 2015-16	NCC Limited	25,98,300/-
F.Y. 2016-17	Jitendrasinh Bhagvatsinh Rathod	6,44,052/-
F.Y. 2016-17	Niyati Construction Company	18,49,417/-
F.Y. 2016-17	Shiwalay Infra Projects Private Limited	12,89,417/-
F.Y. 2016-17	Larsen & Toubro Limited	43,62,615/-
F.Y. 2016-17	Bhimji Velji Sorathia Construction Private Limited	59,81,715/-
F.Y. 2017-18	Acme Air Equipments Private Limited	60,000/-
F.Y. 2017-18	Patel Infrastructure Pvt.Ltd	8,95,423/-
F.Y. 2017-18	Karnavati Infrastructure Private Limited	6,75,000/-
F.Y. 2017-18	Shiwalay Infra Projects Private Limited	22,67,830/-
F.Y. 2017-18	Larsen & Toubro Limited	8,89,772/-
F.Y. 2017-18	Bhimji Velji Sorathia Construction Private Limited	3,90,309/-

The above facts further establishes the claim of the appellant that they have manufactured Ready Mix Concrete (RMC) on behalf of these companies at their premises with the help of the machinery desired by them and detailed in the contract documents discussed supra.

12. It is also observed that accepting the facts submitted by the appellant, the adjudicating authority has went on to classify the activities of the appellant as 'taxable service' under Section 66 E(f) of the Finance Act, 1994. I find it relevant to refer to Section 66 E(f) of the Finance Act, 1994, relevant portions of which are reproduced as below :

SECTION 66E. Declared services. —
The following shall constitute declared services, namely:—
(a) renting of immovable property
...
(f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods;
...

Upon examining the above provisions of the Finance Act, 1994 with the facts and circumstances of the case, I find that the activities undertaken by the appellant i.e supply of ready mix concrete do not in any way fall under the category of '*transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods.*' Hence, the adjudicating authority has erred in considering the activity of the appellant as taxable service in order to confirm the demand and therefore, the impugned order is defective and legally unsustainable.

13. I further find that in terms of erstwhile Central Excise Act, 1944, 'Ready Mix Concrete' has been identified as a manufactured product and classified under CETH – 38245010 as an excisable good. The relevant portion of the Chapter – 38 of CETA, 1985 is reproduced below :

Tariff Item	*Description of goods*	*Unit*	*Rate of duty*
...	...		
3824	*PREPARED BINDERS FOR FOUNDRY MOULDS OR CORES; CHEMICAL PRODUCTS AND PREPARATIONS OF THE CHEMICAL OR ALLIED INDUSTRIES (INCLUDING THOSE CONSISTING OF MIXTURES OF NATURAL PRODUCTS), NOT ELSEWHERE SPECIFIED OR INCLUDED*		
3824 10 00	*Prepared binders for foundry moulds*	*Kg.*	*12.5%*
...	...		
3824 50 10	***Concretes ready to use known as "Ready-mix Concrete (RMC)"***	***Kg.***	*6%*
...	...		

From the above provisions it is further confirmed that, since RMC is considered as an exciseable / dutiable good under erstwhile Central Excise Act, 1944, the process of manufacture of such excisable good is to be treated as *'Process amounts to maufacture'*. Further, I also find that once any activity is considered as 'Amounts to manufacture' under erstwhile Central Excise Act, 1944, the same cannot be considered as 'Taxable Service' under the Finance Act, 1994. Therefore , the impugned order issued by way of classifying the act of 'Supply of Ready Mix Concrete' as a 'Taxable Service' is legally incorrect and liable to be set aside.

14. I also find that in the instant case the entire transaction between the appellant and their customers are required to be considered as sale as a whole. The entire procedure of installing the batching plant and machinery, preparing the Ready Mix Concrete and laying them at the desired locations are a bundled activity and cannot be considered independently. Therefore, considering the same I find that the activity of the appellant i.e *'carrying out the Job-Work of conversion of raw-materials into RMC on site'* cannot be considered as a taxable activity and the entire activity is exempted from Service Tax. My view finds support from the following judicial pronouncements :

14.1 The Hon'ble CESTAT Principal Bench, New Delhi in the case of *GMK*

Concrete Mixing Pvt.Ltd Vs Commissioner of Service Tax, Delhi reported as 2012 (25) S.T.R. 357 (Tri. - Del.) ruled as under :

...

4. Heard both sides and perused the records.

5. Record does not reveal involvement of any taxable service aspect in the entire supply of RMC. Rather the contract appears to be a sales contract instead of a service contract. In absence of cogent evidence to the effect of providing taxable service, primary and dominant object of the contract throws light that contract between the parties was to supply ready mix concrete (RMC) but not to provide any taxable service. Finance Act, 1994 not being a law relating to commodity taxation but services are declared to be taxable under this law, the adjudication made under mistake of fact and law fails.

6. Appeal is accordingly allowed.

14.2 The Hon'ble CESTAT Principal Bench, New Delhi in the case *of Vikram Ready Mix Concrete Pvt. Ltd. Vs Commissioner of Service Tax, Delhi* reported as 2016 (42) S.T.R. 866 (Tri. - Del.) decided as below :

... the short issue involved in the present appeal is as to whether supply of ready mix concrete and carrying out the ancillary and incidental activities of pouring, pumping and laying of concrete would call for service tax liability or not.

2. Tribunal in the case of GMK Concrete Mixing Pvt. Ltd. v. CST, Delhi reported in 2012 (25) S.T.R. 357 (Tri. - Del.) has held that the entire exercise is sale of ready mix concrete and there is no service element involved so as to create service tax liability against the assessee.

3. By following the said decision, we set aside the impugned order and allow the appeal with consequential relief to the appellant.

...

14.3 The Hon'ble CESTAT, WZB, Ahmedabad in the case of Wagad Infraprojects Pvt.Ltd Vs Commr. of C.Ex & S.T., Vadodara reported as 2022 (59) G.S.T.L. 95 (Tri. - Ahmd.) has pronounced as under :

...

13. In view of the above judgments, it is clear that as per nature of product of RMC, every manufacturer who needs to supply RMC to the customer, apart from manufacturing, transportation, pumping and laying of concrete is inevitable for delivery of RMC. Therefore, all the activities, particularly when the value of such activities are integral part of the assessable value, which is determined in terms of Section 4 of Central Excise Act, 1944. The activities cannot be vivisected for the purpose of charging service tax on the same activity which is part and parcel of manufacturing activity. In view of this settled position, merely because the contract showing as Works Contract, the physical nature of transaction cannot be overlooked.

14. As per above view, which is clearly supported by various judgments reproduced above, we are of the clear view that the activity of the appellant is predominantly of manufacture and sale of goods. Accordingly, the same cannot be charged with service tax under Works Contract service.

...

19. As per our above discussion and findings, we are of the clear view that activity of the appellant is entirely of excisable activity. Therefore, the same will not fall under Works Contract service in terms of Finance Act, 1994. Accordingly, the demand of service tax raised under Works Contract service is clearly not sustainable. Therefore, the impugned order is set aside, appeal is allowed with consequential relief, if any, in accordance with law.

15. In view of the above discussions and respectfully following the above judicial pronouncements I am of the considered opinion that the demand of Service Tax amounting to Rs. 42,85,982/- confirmed vide the impugned order is legally unsustainable and is set aside. As the demand fails to sustain on merits there is no question of interest and penalty. The appeal filed by the appellant is allowed.

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

28-6-23

(Shiv Pratap Singh)
Commissioner (Appeals)

Dated:28th June, 2023

Attested

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

To,
By RPAD/SPEED POST

Shri. Kiritgiri Natvargiri Goswami,
Proprietor of M/s Erveen Ready-mix Construction,
At-Behind High School, Kherva,
Dist.-Mehsana,
Gujarat – 382711

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Gandhinagar.
3. The Deputy/Assistant Commissioner, CGST & Central Excise, Division : Mehsana, Commissionerate : Gandhinagar
4. The Dy/Assistant Commissioner (Systems), CGST Appeals , Ahmedabad. (for uploading the OIA)
5. Guard File.
6. P.A. File.