



सत्यमेव जयते

आयुक्त का कार्यालय  
Office of the Commissioner  
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय  
Central GST, Appeals Ahmedabad Commissionerate  
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**By SPEED POST**

DIN:- 20230764SW0000444C8F

(क)	फाइल संख्या / File No.	GAPPL/COM/STP/2371/2022-APPEAL / 395H - 58
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-060/2023-24 and 21.07.2023
(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	31.07.2023
(ङ)	Arising out of Order-In-Original No. 50/ST/OA/ADJ/2021-22 dated 31.03.2022 passed by the Assistant Commissioner, CGST, Division-Himmatnagar, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Mahendrakumar Punambhai Makwana, Patel Na Muvada, PO - Sathamba, Bayad, Sabarkantha, Gujarat-383340

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:-

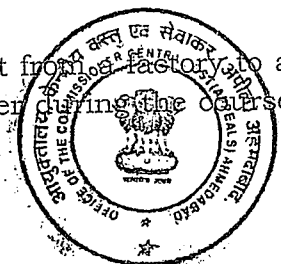
**Revision application to Government of India:**

(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 में हो माल की प्रक्रिया के दौरान हुई हो।

In case of any loss of goods where the loss occur in transit from one 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 मामले 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 हों।

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 ईए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता ड 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 होती रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

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

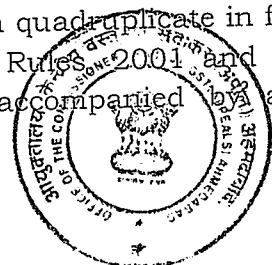
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-  
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 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-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 पढ़ी 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 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।

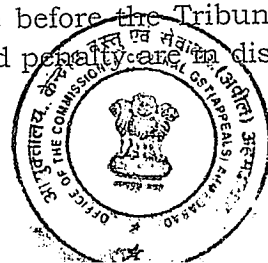
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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 मांग 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."

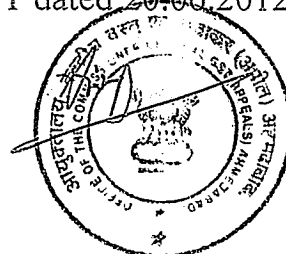


अपीलिय आदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s. Mahendrakumar Punambhai Makwana, At. Patel na Muvada, P.O. Sathamba, Tal. Bayad, Dist. Sabarkantha (hereinafter referred to as the appellant) against Order in Original No. 50/ST/OA/ADJ/2021-22 dated 30.03.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division : Himmatnagar, Commissionerate : Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AJQPM4900JSD001 for providing services falling under the category of Erection, Commissioning and Installation Service. An analysis of the gross value of sale of services declared in the Income Tax Returns (ITR-5)/TDS Returns of the appellant for the F.Y. 2016-17 was undertaken vis-à-vis their Service Tax Returns (ST-3) by the Central Board of Direct Taxes (CBDT) and the said analysis was forwarded to the Central Board of Indirect Taxes & Customs (CBIC). It was observed that the gross value of sale of services declared in their ST-3 Returns file with the Service Tax department was less than the gross value of Sale of Services declared in the Income Tax Returns. It prima facie appeared to the jurisdictional officers that the appellant have misdeclared the gross value of sale of services in their ST-3 Returns and short paid/not paid the applicable Service Tax.

2.1 Accordingly, letters dated 02.07.2020 and 13.07.2020 were issued through e-mail to the appellant calling for documents viz. Balance Sheet, Profit & Loss Account, Income Tax Returns, 26AS & Service Tax Ledger for the F.Y. 2016-17. The appellants failed to reply to the queries. It was further observed by the jurisdictional officers that the nature of service provided by the appellant were covered under the definition of 'Service' as per Section 65 B(44) of the Finance Act, 1994 (FA,1994), and their services were not covered under the 'Negative List' as per Section 66D of the FA,1994. Further, their services were not exempted vide the Mega Exemption Notification No.25/2012-S.T dated 20-06-2012 (as amended).



3. The Service Tax liability of the appellant for the F.Y. 2016-17 was determined on the basis of value of 'Sales of Services' shown in the ITR-5 and Form 26AS for the relevant period provided by the Income Tax department as per details below :

Table

Sr. No	Period (F.Y.)	Value of Sale of Services, as per Income Tax data (in Rs.)	Value of Sale of Services declared as per ST-3 Returns	Rate of Service Tax including cess	Service Tax liability (In Rs.)
1	2016-17	39,71,330/-	0	15 %	5,95,700/-
	Total	39,71,330/-	0		5,95,700/-

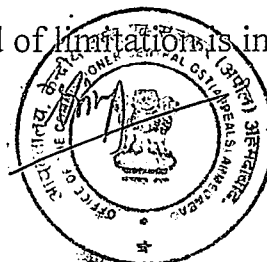
3. The appellant was issued a Show Cause Notice vide F.No. V/15-90/CGST-HMT/O&A/20-21 dated 24.07.2020 (in short 'SCN') wherein it was proposed to:

- Consider the value of Rs.39,71,330/- as the taxable value for the F.Y. 2016-17
- Demand and recover service tax amounting to Rs. 5,95,700/- under the proviso to Section 73 (1) of the Finance Act, 1994 alongwith Interest under Section 75 of the Finance Act, 1994 ;
- Impose penalty under Section 75, and 78 of the Finance Act, 1994;

4. The SCN was adjudicated vide the impugned order wherein the demand of service tax amounting to Rs. 5,95,700/- (considering the taxable value as Rs. 39,71,330/-) was confirmed under Section 73(1) of the Finance Act, 1994 alongwith interest under Section 75. Penalty amounting to Rs. 5,95,700/- was imposed under Section 78 of the Finance Act, 1994 with option for reduced penalty under proviso to clause (ii).

5. Being aggrieved with the impugned order, the appellant have filed the present appeal alongwith application for condonation of delay on following grounds :

- The SCN was based on presumptions and data received from third party i.e the Income Tax department. Therefore the SCN is indiscriminately issued and is not sustainable.
- The department have failed to establish 'Willful Suppression' in the case, therefore the invocation of extended period of limitation is incorrect.



➤ In support they cited following citations :

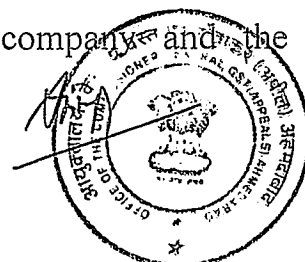
- Order of the Hon'ble Apex Court in the case of M/s Cosmic Dye Chemical Vs Collector of Cen.Excise, Bombay [1995(75) ELT 721 (SC).
- Tamil Nadu Housing Board Vs CCE [ 1995 Supp(1) SCC 50 1994].
- Order of the Hon'bel CESTAT in the case of Kush Constructions Vs CGST NACIN 2019 (24) GSTL 606 (Tri.-All)

➤ The appellant has neither charged nor collected service tax from the clients. Therefore, the amount collected from the service receivers would be inclusive of tax and they are eligible for cum-duty benefit while calculating their tax liability in terms of Section 67 of the Finance Act, 1994. In support they cited the following decisions :

- In the case of P.Jani & Co. Vs Commr. of Service Tax, Ahmedabad.
- Patna Vs Advantage Media Consultants [2008 (10) STR 449 (Tri. Kolkata)].

5.1 The appellants submitted an additional submission on 01.05.2023 vide which they submitted that :

- Cited CBEC Instruction dated 26.10.2021 wherein the Board has specifically directed that indiscriminate SCN's should not be issued in on the basis of data received from Income Tax department. A reconciliation statement is required to be sought from the taxpayer for explaining the difference in income observed. As the subject SCN was issued without following the directives, hence the same is liable to be quashed.
- In support the cited the following citations :
  - Decision of the Hon'ble High Court of Madras in the case of R.Ramdas Vs Joint Commissioner of Central Excise, Puducherry – 2021 (44) GSTL 258 (Mad.).
  - Decision of the Commissioner (Appeals), Ahmedabad in the case of M/s A One Scaffolding Supplier Vs The Joint Commissioner (2021).
- They also cited the directives issued vide CBEC Master Circular No.1053/02/2017-CX dated 10.03.2017.
- The appellants have provided services to M/s Madhya Gujarat Vij Nigam Limited (MGVCL), which is Government company and the services



provided to them are eligible for exemption vide Sr.No.12 (A) of Notification No. 25/2012-ST dated 20.06.2012. They also cited the decision of Hon'ble Principal Bench, CESTAT, New Delhi in an identical case of M/s Vivek Constructions Vs Commissioner of Central Excise, Jodhpur, wherein the Hon'ble Tribunal has decided in favour of the party. As the services stand exempted vide above notification, the demand of interest and penalty also becomes infructuous.

6. Personal Hearing in the case was held on 18.05.2023, Shri Sachin Dharwal, Chartered Accountant, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in the appeal memorandum as well as in the additional written submission.

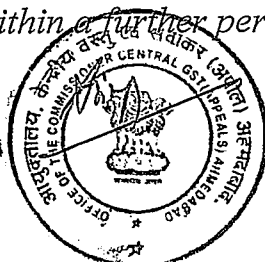
6.1 On account of change in the appellate authority, personal hearing was again held on 23.06.2023, Shri Sachin Dharwal, Chartered Accountant, appeared on behalf of the appellant for the hearing. He submitted that the appellant provided Works Contract Services to M/s MGVCL, which are exempt from Service Tax vide Sr.No. 12 (A) of Notification No. 25/2012-ST dated 20.06.2012. He requested to set aside the OIO.

7. It is observed from the records that the present appeal was filed by the appellant on 19.07.2022 against the impugned order dated 31.03.2022, which was received by the appellant on 20.04.2022.

7.1 It is also observed that the Appeals preferred before the Commissioner (Appeals) are governed by the provisions of Section 85 of the Finance Act, 1994. The relevant part of the said section is reproduced below :

*“(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 received the assent of the President, relating to service tax, interest or penalty under this Chapter:*

*Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.”*

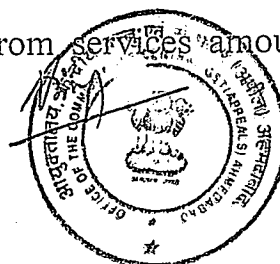


7.2 As per the legal provisions above, the period of two months for filing appeal before the Commissioner (Appeals) for the instant appeal ends on 20.06.2022 and further period of one month, within which the Commissioner (Appeals) is empowered to condone the delay upon being satisfied with the sufficient reasons shown by the appellant, ends on 19.07.2022. This appeal was filed on 19.07.2022, i.e after a delay of one month from the last date of filing appeal, and is within the period of one month that can be condoned.

7.3 In their application for condonation of delay, the appellant have submitted that the impugned order was delivered at his old address i.e Patel na Muvada, PO Sathamba, Tal-Bayad, Dist.Sabarkantha and received by his uncle who is a farmer by profession and was unaware about the contents of the envelope. Reportedly, the appellant have shifted to his new address, - B-704, Prarthana Vihar, Nr. Jalsa Apartment, Gotri Road, Vadodara. Upon his visit to their old address his uncle handed over the envelope (as received by him) containing the impugned order. Thereafter, he consulted and engaged a Chartered Accountant to defend his case. The delay occurred due to the above reasons and was inadvertent. These reasons were also explained by them during the course of personal hearing, the grounds of delay cited and explained by the appellant appeared to be genuine, cogent and convincing. Considering the submissions and explanations made during personal hearing, the delay in filing appeal was condoned in terms of proviso to Section 85 (3A) of the Finance Act, 1994.

8. I have gone through the facts of the case, submissions made in the Appeal Memorandum, additional written submission and oral submissions made during the personal hearing. The issue before me for decision is whether the demand of Service Tax amounting to Rs. 5,95,700 /- confirmed vide the impugned order 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. 2016-17.

8.1 It is observed from the case records that the appellant is a proprietorship firm engaged in providing Services of erection, commissioning, installation and electrification works and other related services, and are registered with the service tax department. Based on the data received from Income Tax department, it appeared that the appellant had shown income from services amounting to Rs.





39,71,330/- during F.Y.2016-17, for which they had not provided any explanation to the department. This had resulted in issuance of the SCN and thereafter issuance of the impugned order. It is further observed that the impugned order has been passed ex-parte.

8.2 I find that there is no evidence on record to suggest that the SCN was served upon the appellant. It is further observed that the SCN was issued entirely on the basis of data received from Income Tax department without conducting any independent inquiry by the issuing authority. I find that the SCN was issued without classifying the category of service or whether they were eligible for Reverse Charge Mechanism or otherwise, even though they were registered with the department. Further, the adjudicating authority has also not caused any verification in the matter and decided the matter ex-parte against the appellant.

8.3 I find it relevant to refer to the CBIC Instruction dated 26.10.2021, wherein at Para-3 it is instructed 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 and the specific Instructions of the CBIC, I find that the SCN and the impugned order has been issued indiscriminately and mechanically without application of mind, and are vague, issued in clear violation of the instructions of the CBIC discussed above. As the impugned order was passed ex-parte the violations of judicial discipline is apparent.

9. I find that the appellant have contended that during the period F.Y. 2016-17 they were engaged in providing have provided services of Erection, commissioning, installation of electrification work and other related services. They have provided services majorly to MGVCL (Madhya Gujarat Vij Company Limited), which is a Government company under the Government of Gujarat. They have claimed exemption from Service Tax under Sr.No.12A of Notification No.



25/2012-ST dated 20.06.2012 and they have not levied or collected Service Tax from their service receivers.

9.1 In order to have a better understanding of the provisions of the notification, relevant portion are reproduced below:

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

**Notification No. 25/2012-Service Tax**

New Delhi, the 20<sup>th</sup> 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<sup>th</sup> 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<sup>th</sup> March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services leviable thereon under section 66B of the said Act, namely:-*

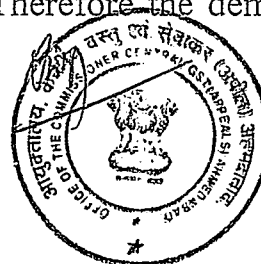
12. *Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of—*

*(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);*

9.2 Examining the above legal provisions with the facts and circumstances of the case it is observed that the appellants have provided services related to 'Erection of HT/LT Lines & TC work for Electrification...'. From the copy of contracts and work orders submitted alongwith the appeal papers, it is observed that they have provided the above services to M/s MGVCL, which is a Gujarat Government Company. Therefore, it is evident that the services provided by the appellant to M/s MGVCL during the period are eligible for exemption under Sl.No.12 (a) of Notification No. 25/2012-ST dated 20.06.2012.

10. I also find that, it is also evident from the copy of Form-26AS submitted by the appellant for the period F.Y.2016-17, that during the period they have received payments under Section 194C of the Income Tax Act, 1961 from different facilities of M/s MGVCL only. Therefore, I am of the considered view that the services provided by the appellant to M/s MGVCL during the period F.Y. 2016-17 merits exemption from service tax as discussed supra. Therefore the demand of service



tax amounting to Rs.5,95,700/- confirmed vide impugned order is liable to be set aside. As the demand of service tax fails to sustain the question of interest and penalty does not arise.

11. Accordingly, the impugned order is set aside and the appeal filed by the appellant is allowed.

12. 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.

( Shiv Pratap Singh )  
Commissioner (Appeals)  
Date: 21<sup>st</sup> July, 2023

Attested:

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



**BY RPAD / SPEED POST**

To

M/s. Mahendrakumar Punambhai Makwana,  
At. Patel na Muvada, P.O. Sathamba,  
Tal. Bayad, Dist. Sabarkantha

Copy to :

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Commissionerate - Gandhinagar.
3. The Deputy /Asstt. Commissioner, Central GST Division – Himmatnagar, Commissionerate : Gandhinagar.
4. The Assistant Commissioner (System), CGST, Appeals, Ahmedabad. (for uploading the OIA)
5. Guard File.
6. P.A. File.

