



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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(क)	फाइल संख्या / File No.	GAPPL/COM/STP/2667/2022-APPEAL / 5987-91
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-091/2023-24 and 28.08.2023
(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	18.09.2023
(ङ)	Arising out of Order-In-Original No. 29/AC/DEM/MEH/ST/Vision Buildcon/2022-23 dated 26.05.2022 passed by the Deputy Commissioner, CGST, Division-Gandhinagar, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Vision Buildcon, 89, GIDC Estate Gozariya, Village-Gozariya, Ta & Dist-Mehsana, Gujarat-382825.

कोई व्यक्ति इस अपील-आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो सकता है।

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

भारत सरकार का पुनरीक्षण आवेदन:-

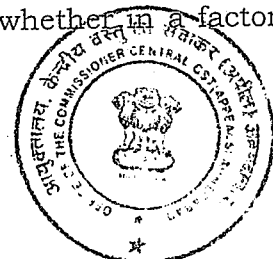
Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की 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 भीतर मूल-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 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 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 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 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."



अपीलियआदेश / ORDER-IN-APPEAL

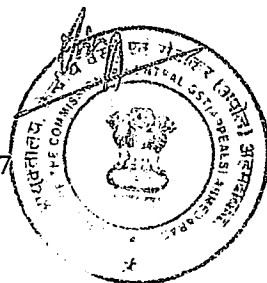
The present appeal has been filed by M/s Vision Buildcon, 89, GIDC Estate Gozariya, Village-Gozariya, Tal & Dist- Mehsana, Gujarat-382825 (hereinafter referred to as the appellant) against Order in Original No. 29/AC/DEM/MEH/ST/Vision Buildcon/2022-23 dated 26.05.2022 [hereinafter referred to as the "*impugned order*"] passed by the Assistant Commissioner, CGST, Division: Mehsana, Commissionerate: Gandhinagar [hereinafter referred to as the "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant were engaged in providing "Works Contract Services" and holding Service Tax Registration No. AANFV1585CSD001. As per the information received through Preventive Section, HQ, Gandhinagar vide D G Systems Report No. 02 & 03, discrepancies were observed in the total income declared by the appellant in their Income Tax Returns (ITR) when compared with the Service Tax Returns (ST-3) for the period F.Y. 2016-17. In order to verify these discrepancies letters dated 05.05.2020 & 02.07.2020 were issued to the appellant through e-mail calling for details of services provided during the period F.Y. 2016-17. The appellant did not file any reply.

3. The jurisdictional officers observed 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 66 D of the FA, 1994. Further, their services were not found to be exempted vide the Mega Exemption Notification No. 25/2012-S.T dated 20.06.2012 (as amended from time to time).

4. The Service Tax liability of the appellant for the F.Y. 2016-17 was calculated on the basis of difference between 'Value of Services declared in ITR' and 'Value of Services Provided as per ST-3 Returns', as per details given in table below :

Sr. No.	Period (F.Y.)	Differential Taxable Value as per Income Tax Data	Rate of S. Tax (incl. Cess)	S. Tax to be demanded
1.	2016-17	1,77,58,807/-	15%	26,63,821/-



4.1 Show Cause Notice F.No. V.ST/11A-201/Vision Buildcon/2020-21 dated 18.08.2020 (in short SCN) was issued to the appellant wherein it was proposed to demand and recover service tax amounting to Rs. 26,63,821/- under the proviso to Section 73 (1) of the Finance Act, 1994 alongwith interest under Section 75 of the Finance Act, 1994. It was also proposed to impose penalties under Section 77(2), 77C and 78 of the Finance Act, 1994.

5. The SCN was adjudicated vide the impugned order wherein

- the demand of Service Tax amounting to Rs. 26,63,821/- was confirmed under Section 73 (2) of the Finance Act, 1994 alongwith interest under Section 75;
- Penalty of Rs. 10,000/- was imposed under Section 77(2) of the Finance Act, 1994;
- Penalty amounting to Rs. 200/- per day till the date of compliance or Rs. 10,000/- whichever is higher was imposed under Section 77(1)(C) of the Finance Act, 1994
- Penalty amounting to Rs. 26,63,821/- was imposed under Section 78 of the Finance Act, 1994 alongwith option for reduced penalty under proviso to clause (ii).

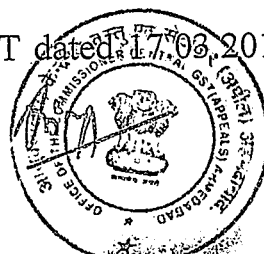
6. Being aggrieved with the impugned order, the appellant have filed this appeal alongwith application for condonation of delay on following grounds:

- The appellant is engaged in the business of providing services of Construction of the Roads and Government Offices for various Governmental Authorities. The details of the work are mentioned in the work orders submitted by them.
- Taxable service was defined under Section 65B (51) of Finance Act, 1994. Relevant extract is reproduced as below:

(51) "taxable service" means any service on which service tax is leviable under section 66B;

Section 66B of the Finance Act, 1994 is the charging section whereby the levy of service tax is specified.

- In accordance with Finance Act, 1994 read with Service Tax Rules, 1994, every service is a taxable service except when such service is specified in Mega Exemption Notification no. 25/2012-ST dated 17.03.2012 or specified



under Section 66D of Finance Act, 1994 whereby Negative list of services are enlisted.

- Section 65B (54) of Finance Act, 1994 defines “works contract” as reproduced below:

(54) “works contract” means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;

- Thus, analysis for classification of any service as works contract is as mentioned below:

- i. *There is transfer of property in goods involved in the execution of such contract.*
- ii. *Transfer of property in goods is leviable to tax as sale of goods.*
- iii. *Such contract is for the purpose of carrying out:*
 - (a) *Construction,*
 - (b) *Erection,*
 - (c) *Commissioning,*
 - (d) *Installation, Completion,*
 - (e) *Fitting out,*
 - (f) *Repair,*
 - (g) *Maintenance,*
 - (h) *Renovation,*
 - (i) *Alteration*

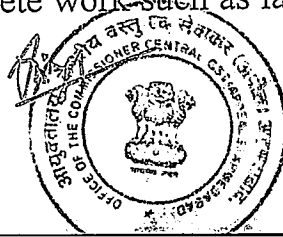
Further, the definition ends with the phrase “any other similar activity or a part thereof in relation to such property”, which means the definition has been made inclusive to include various allied activities in relation to works contract.

- According to a CBIC concept note related to works contract services, disputes have been arisen in some parts of the country regarding applicability of Service Tax on certain activities such as shifting of overhead cables to underground on account of renovation/ widening of roads; laying of electrical cables under or alongside roads/ railway tracks; between grids/sub-stations/transformers the distribution points of residential or commercial complexes and such activities as electrification of railways, installation of street-lights, trafficlites, flood-lights. This clarification considers the taxability of different activities taking into account the scope of all services (such as site formation/excavation /earth moving service, commercial or industrial construction services erection, commissioning or installation services; or works-contract service) that are presently taxable as well as those which are covered under the Finance act, 1994.



➤ The scope of certain taxable services in relation to works contract is explained in brief as under:

- i. 'Commercial or industrial construction services', in brief, covers construction of and the completion, finishing, repair, alteration, renovation, restoration or similar activities pertaining to buildings, civil structures, pipelines or conduits. Therefore, only such electrical works that are parts of (of which result in emergence of a fixture of) buildings, civil structures, pipelines or conduits, are covered under the definition of this taxable service. Further, such activities undertaken in respect of roads, railways, transport terminals, bridges, tunnels and dams are outside the scope of levy of Service Tax under this taxable service.
- ii. Under 'Erection, commissioning or installation services', the activities relevant to the instant issue are:
 - (a) the erection, commissioning and installation of plant, machinery, equipment or structures; and
 - (b) the installation of electrical and electronic devices, including wiring or fitting there for. Thus, if an activity does not result in emergence of an erected, installed and commissioned plant, machinery, equipment or structure or does not result in installation of an electrical or electronic device (i.e. machine or equipment that uses electricity to perform some other function) the same is outside the purview of this taxable service.
- iii. Works Contract incorporates the inclusions and exclusions of the aforementioned two taxable services (amongst others) and it is the nature of the contract (i.e. a contract wherein the transfer of property in goods involved in leviable to a tax as sale of goods) rather than the nature of activities undertaken, that distinguishes it from the previously stated taxable services. Thus, even in the case of 'works contract' if the nature of the activities is such that they are excluded from aforesaid two services then they would generally remain excluded from this taxable service as well.
- iv. 'Site formation and clearance, excavation, earthmoving and demolition services' are attracted only if the service providers provide these activities independently and not as part of a complete work such as laying of cables under the road.



- In accordance with the above reasoning, it is evident that the said services are classified as “works contract service”. The classification is very much important to understand the taxability of the service. The impugned order has imposed Service Tax Liability on the basis of classification of activities undertaken by the appellant as “service” under Finance Act, 1994.
- It shall be discriminatory for the appellant to read law in isolation with any other provisions enlisted in the Finance Act, 1994 or in Service Tax Rules, 1994 or any notification, circulars etc. issued. The principal source of law contains Customs or Customary Law (Act along with Rules), Notifications, Circulars, Trade Notices, Judicial Precedents (Case Laws). Thus, every provision must be read in conformance of all the provisions made with its regard.
- Thus, the appellant accepts that they have provided “services” under Finance Act, 1994. However, the appellant has provided “works contract” and further provisions regarding works contract needs to be referred to determine Tax liability. The Adjudicating authority has imposed ad hoc demand on account of differences in turnover between Form ITR-4 and Form ST-3. On the said grounds the demand is not maintainable.
- The Adjudicating authority has failed to observe that the Anand Agriculture University is the Government of Gujarat Undertaking for the Farmers of Gujarat and also the education institute for Not for Profit Undertaking. It's a Gujarat Government granted Institute for research and development of Farming Activity in Gujarat. The Assesse has done the following work at the University Agriculture Farms.

<u>Work order</u>	<u>Description of service</u>
AAU/U.15/EE/A/C/2288/9994-96 dated 05/12/2016	Providing farm facility from Mango farm gate to old pump room at Anand Agriculture University, Anand
AAU/U.15/EE/A/C/2143/4389-91 dated 11/07/2016	Construction of compound wall to plot no. 12 & 13 at AAU, Dahod
AAU/U.15/EE/A/C/23273/13541-43 dated 03/03/2017	Construction of farm protection wall near canal (broken) at A.A.U Dahod



The above work falls under the negative list of service provided at the agriculture farm.

- The Adjudicating authority has made observations that the APMC Vegetable Market is not for the General Public but the Government had established the APMC for the General Public and there are not any restrictions or barrier for General Public to enter into the APMC Vegetable Market.

Sublet Agreement Dated 24.10.2016 of Ravi Builders	CC Road of APMC Mehsana
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The above work is specifically exempted under 25/2012 mega exemption. They rely on the judgements of Hon'ble CESTAT in case of M/S. Arvindra Electricals Versus Commissioner Of Central Excise & St, Chandigarh [2018 (9) Tmi 86 - Cestat Chandigarh] & Shri Sanjeev K. Gaddamwar Versus Commissioner of Central Excise, Nagpur.

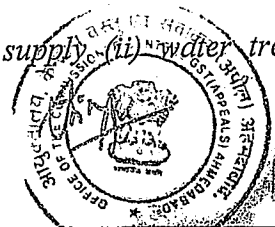
- The construction work performed by the appellant should be classified as "works contract service". With that being clear, relevant exemption entries in Mega Exemption Notification no. 25/2012-ST or inclusion in Negative List as per Section 66D of Finance Act, 1994 needs to be referred.
- The Adjudicating authority is of contention that the service provided by the appellant is classified as taxable service as there is no exemption provided for the said services. However, the services provided by the appellant are covered under Entry 29 read with Entry 12 of Mega Exemption Notification no. 25/2012 dated 20.06.2012. The said entry is reproduced below:

12. Services provided to the Government, a local authority or a government 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) 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 65B of the said Act;

Further, Entry no. 29 of the said notification provides:

Services by the following persons in respective capacities –

(a) ...

(b) ...

...

- However, Clause (a), (c) & (f) of Entry no. 12 was omitted vide Notification no. 06/2015-S.T. w.e.f. 01.04.2015. The said exemption was withdrawn through the said Notification.
- Further, Entry no. 12A was inserted vide Notification No. 09/2016-S.T. w.e.f. 01.03.2016 and the said exemption was restored with certain restrictions. The said entry is reproduced below:

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

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

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

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

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

provided that nothing contained in this entry shall apply on or after the 1st April, 2020;

2017

- In FY 2016-17, the appellant has claimed exemption under Entry 12,13 of Notification no. 25/2012-ST dated 17.03.2012 on income relation to contracts obtained and construction of the road for the Government amounting to Rs. 1,77,58,807/-. The summary of the same is reproduced for easy reference:

Sr.	Financial Year	Total Income	Income on which Exemption claimed
1.	2016-17	1,77,58,807/-	1,77,58,807/-

- The Adjudicating authority has also not taken into account the effect of such exemption, abatement or Reverse Charge Mechanism which shows the negligence during imposition of such hefty Service Tax on the appellant. Thus, the tax liability has been paid in full and no additional liability is



payable by the appellant. On the said ground the order needs to be set aside.

- The Appellant as well as the Service Recipient has paid Tax as per the above discussions. It is evident from the same that no further liability arises on the part of appellant.
- Adjudicating authority has issued order against the appellant without clearing the actual facts. In fact, the appellant files its Income tax return in Form ITR-4 whereas the demand as per the order issued against the appellant has been derived from difference between Form ITR-4 and Form ST-3. Form ITR-4 does not exist in the appellant's case. It is assumed that the contention of the Adjudicating authority is that the said figures were derived from Form ITR-4.
- As no tax is payable, the question of penalty does not arise. All the submissions made above would also apply to penalty under Section 76 & 77.
- According to Section 80, no penalty under Section 76, 77 or 78 can be imposed if the appellant proves that there was a reasonable cause for default or failure under these sections.
- Section 80 provides notwithstanding anything contained in sections 76, 77, 78 or 79; no penalty shall be imposable on assessee for any failure referred to in the said provisions if assessee proves that there was reasonable cause for said failure. [*CCE, Meerut-II v. On Dot Couriers & Cargo Ltd. (2006) 6 STJ 337 (CESTAT, New Delhi)*]
- Penalty under section 78 can be levied only if there is a fraud; collusion; willful mis-statement; suppression of facts or contravention of any provisions with intend to evade payment of service tax and it can be imposed by invoking larger period or extended period for issue of show-cause notice.
- Only in unusual circumstances, demands for extended period are to be invoked, with a very serious allegation of suppression of facts and intention to evade payment of service tax. Such serious allegations of suppression can be invoked only if the noticee has deliberately done an action with an intention to hide certain facts from the department and department has confirmed it beyond doubt with aid of corroborative evidence that there was a deliberate



act on part of noticee to evade tax.

- No penalty shall be imposable on noticee for any failure referred to in the said provisions if noticee proves that there was reasonable cause for said failure.
[CCE, Meerut-II v. On Dot Couriers & Cargo Ltd. (2006) 6 STJ 337 (CESTAT, New Delhi)]

7. It is observed from the records that the present appeal was filed by the appellant on 22.08.2022 against the impugned order dated 26.05.2022, which was reportedly received by the appellant on 18.06.2022.

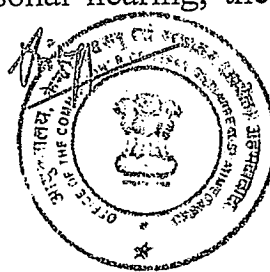
7.1 It is also observed that the Appeals preferred before the Commissioner (Appeals) are governed by the provisions of Section 85 of the Finance Act, 1994. The relevant part of the said section is reproduced below :

“(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 above legal provisions, the period of two months for filing appeal before the Commissioner (Appeals) for the instant appeal ends on 18.08.2022 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 18.09.2022. This appeal was filed on 22.08.2022, i.e after a delay of 04 days from the stipulated 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, they submitted that the authorized representative of appellant was infected by the Seasonal Flu and not able to come to the office for once week, therefore, the delay of 04 days in filing the appeal has occurred. These reasons of delay 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. Personal hearing in the case was held on 31.08.2023. Shri Sameer Ghanchi, Chartered Accountant, appeared on behalf of the appellant for hearing. He reiterated the submissions made in the appeal memorandum. He also submitted that the appellant provided construction of road services to Government Authorities. Copies of work orders are attached with the appeal along with financial statements. He requested to set aside the impinged order, since the services rendered by the appellant are exempted from service tax, vide entry no. 12 and 13 of the notification no. 25/2012-ST.

9. I have gone through the facts of the case, submissions made in the Appeal Memorandum, oral submissions made during hearing and the materials available on records. The issue before me to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of Service Tax amounting to Rs. 26,63,821/- 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.

10. It is observed that the appellant are a partnership firm engaged in providing Commercial and Industrial Construction Service and Works Contract Service. They were registered with the service tax department, however, the SCN in the case has been issued only on the basis of data received from the Income Tax department. It is apparent that no further verification has been caused by the jurisdictional office. Hence, the SCN was issued in clear violation of the CBIC Instructions dated 20.10.2021, relevant portion of the Instructions is re-produced 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

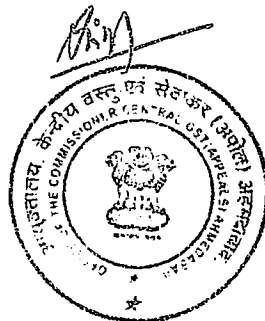


Considering the facts of the case and the specific Instructions of the CBIC, I find that the SCN was issued indiscriminately and is vague.

11. It is further observed that during the period F.Y. 2016-17 their total turnover was Rs. 1,77,41,343/-. From the documents submitted by the appellant it was confirmed that during the said period they were engaged in the business of construction of civil structures and Construction of Road Works for various Governmental Authorities in accordance with the specifications and drawings supplied by the Service Receivers. During the period F.Y. 2016-17 they had provided services under four Work Orders, the details are as per table below :

Sr. No	Work Order details	Description of Service provided/work done	Amount of Service (in Rs.)
1	AAU/U.15/EE/A/C/2288/9994-96 dated 05/12/2016	Providing farm facility from Mango farm gate to old pump room at Anand Agriculture University, Anand.	18,67,173/-
2	AAU/U.15/EE/A/C/2143/4389-91 dated 11/07/2016	Construction of compound wall to plot no. 12 & 13 at AAU, Dahod	4,10,974/-
3	AAU/U.15/EE/A/C/23273/13541-43 dated 03/03/2017	Construction of farm protection wall near canal (broken) at A.A.U Dahod.	61,524/-
4	Sublet Agreement Dated 24.10.2016 from M/s Ravi Builders	CC Road of APMC Mehsana.	1,54,01,672/-
		Total	1,77,42,343/-

11.1 I find that the adjudicating authority has recorded vide the impugned order that during the relevant period the appellants have provided services amounting to Rs. 38,45,779.57/- to the Anand Agricultural University and services amounting to Rs. 1,94,79,993/- to M/s APMC, Mehsana. The services provided to M/s APMC, Mehsana was awarded to them by M/s Ravi Builders, Mehsana (by way of sub letting of contract). It is also observed that M/s Ravi Builders is a Proprietary firm with Shri. Maheshbhai Ishwardas Patel as the proprietor. These facts are not disputed. It is also observed that from the Form 26AS submitted by the appellant it is also confirmed that the appellant have received amounts under Section 194C of the Income Tax Act, 1961 from the service recipients mentioned above. Hence, provision of service by the appellant to the above service recipients are undisputed.



11.2 Further the appellants have claimed exemption in respect of all the above services provided by them in terms of Notification No. 25/2012-ST dated 20.06.2012. The details of exemptions claimed by them are as per the table below :

Sr. No	Work Order details	Description of Service provided/work done	Amount of Service (in Rs.)	Sr. No. of Notfn.No. 25/2012-ST dated 20.06.2012
1	AAU/U.15/EE/A/C/2288/9994-96 dated 05/12/2016	Providing farm facility from Mango farm gate to old pump room at Anand Agriculture University, Anand.	18,67,173/-	13 (a)
2	AAU/U.15/EE/A/C/2143/4389-91 dated 11/07/2016	Construction of compound wall to plot no. 12 & 13 at AAU, Dahod	4,10,974/-	12 (c)
3	AAU/U.15/EE/A/C/23273/13541-43 dated 03/03/2017	Construction of farm protection wall near canal (broken) at A.A.U Dahod.	61,524/-	12 (c)
4	Sublet Agreement Dated 24.10.2016 from M/s Ravi Builders	CC Road of APMC Mehsana.	1,54,01,672/-	13 (a)

12. In order to have a better understanding, I find it relevant to refer to the exemption notification and the relevant portion of the notification is reproduced below :

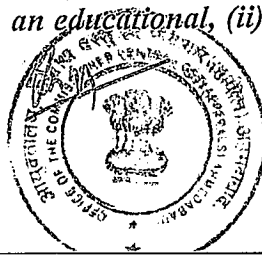
Government of India
Ministry of Finance
(Department of Revenue)
Notification No. 25/2012-Service Tax

New Delhi, the 20th 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 17th 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 17th 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;

13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of:-

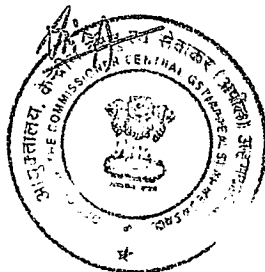
- (a) a road, bridge, tunnel, or terminal for road transportation for use by general public;

...

12.1 Examining the above legal provisions with the facts of the case and the type of services provided by the appellant during the period F.Y. 2016-17, I find that, the service receivers are Anand Agricultural University and Agricultural Produce Market Committee (APMC). It is universal fact that Anand Agricultural University came into existence with effect from 1-5-2004 by enactment of Gujarat Agricultural Universities Act, 2004 (Gujarat Act, No.5 of 2004), is supported by Indian Council of Agricultural Research and supported by the Government of Gujarat. It is also factual that Agricultural Produce Market Committee (APMC) is a marketing board established by the State Governments in India to ensure farmers are safeguarded from exploitation by large retailers, as well as ensuring the farm to retail price spread does not reach excessively high levels.

12.2 It is also evident from the copy of contracts provided by the appellant that the type of service is related to construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration and/or construction of road for use by general public. Further, considering the status of the service receivers it is beyond doubt that the services provided by the appellant fall under the purview of the exemptions extended vide Sr. No. 12 and/or 13 of the Notification No. 25/2012-ST dated 20.06.2012, as amended.

13. In view of the above, I am of the considered view that regarding the services provided by the appellant during the period F.Y. 2016-17, they are eligible for exemption in terms of Sr. No. 12 and/or 13 of the Notification No. 25/2012-ST dated 20.06.2012, as amended. The adjudicating authority has overlooked the submissions made by the appellant during the adjudication and passed the impugned order mechanically. Therefore, the demand of service tax amounting to



Rs. 26,63,821/- confirmed vide the impugned order is legally unsustainable and liable to be set aside.

14. Accordingly, the demand of Service Tax amounting to Rs. 26,63,821/- confirmed vide the impugned order is hereby set aside. As the demand of Service Tax fails to sustain the question of interest and penalty does not arise. The appeal filed by the appellant is allowed.

15. 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.

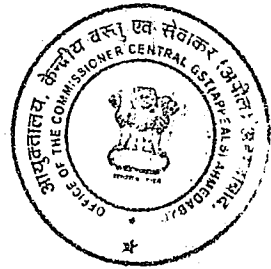
Shiv Pratap Singh
28-8-23

(Shiv Pratap Singh)
Commissioner (Appeals)

Date: 28 August, 2023

Attested

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



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M/s Vision Buildcon
89, GIDC Estate Gozariya, Village-Gozariya,
Tal. & Dist- Mehsana, Gujarat-382825.

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2. The Principal Commissioner, CGST, Commissionerate - Gandhinagar.
3. The Assistant Commissioner, Central GST Division – Mehsana,
Commissionerate : Gandhinagar.
4. The Assistant Commissioner (System), CGST, Appeals, Ahmedabad. (for
uploading the OIA)
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6. P.A. File.

