



आयुक्त का कार्यालय), अपीलस  
**Office of the Commissioner,**  
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय  
**Central GST, Appeal Commissionerate-**  
**Ahmedabad**



जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.  
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**DIN-20201164SW0000830127**

**स्पीड पोस्ट**

क फाइल संख्या : File No : V2(ST)54/EA-2/North/Appeals/2019-20

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-33/2020-21**  
दिनांक Date : **19.11.2020** जारी करने की तारीख Date of Issue : **27.11.2020**

आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Akhilesh Kumar, Commissioner (Appeals)**

ग Arising out of Order-in-Original No. **07/DC/D/2019-20/AKJ** दिनांक: **14.02.2020**, issued by  
Assistant/Deputy Commissioner, Central GST & Central Excise, Division-IV, Ahmedabad-North

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent

**Appellant-** The Deputy Commissioner, CGST & Central Excise, Division-IV, Ahmedabad  
North, Ahmedabad

**Respondent-** M/s Flow Dynamics India, 8A, Ashwamegh Industrial Estate, Nutan Nagrik Bank  
Lane, Changodar, Ahmedabad-382213

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे  
बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर 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।

(i) 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 :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने 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 प्रकिया के दौरान हुई हो।

(ii) 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.



(क) 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।

(A) 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.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

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।

(c) 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.

(1) 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 दिनोंक 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 मुख्यशीर्ष 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो 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 सेवाकर 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 :-

(क) उक्तलिखित परिच्छेद 2 (1) क 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

(a) 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 in para-2(i) (a) above.



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 Appellate 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 मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर 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), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) 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.

इस 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."



## ORDER-IN-APPEAL

The Deputy Commissioner, CGST, Division-IV, Ahmedabad North(hereinafter referred as “the Department”) has filed this appeal as per Review Order No.049/2019-20 dated 02.03.2020 issued under F. No. IV/16-76/OIO/19-20-RA passed by the Commissioner, Central GST and Central Excise, Ahmedabad North against Order-in-Original No. 07/DC/D/2019-20/AKJ dated 14.02.2020 [hereinafter referred to as “impugned order”] passed by Deputy Commissioner, Central GST Division-IV, Ahmedabad North [hereinafter referred to as “adjudicating authority”] in the case of M/s Flow Dynamics India, 8A, Ashwamegh Industrial Estate, NutanNagrik Bank Lane, Changodar, Ahmedabad [hereinafter referred to as “Respondent”].

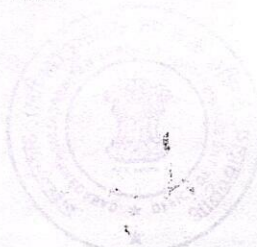
2. The facts of the case, in brief, is that the respondent, having Service Tax Registration No. AHBPS138BST001, is engaged in providing services under the category of Erection, Commissioning and Installation Services, Works Contract Service and Transport of Goods by Road/Goods Transport Agency Services. During the course of scrutiny of financial records of the respondent by the officers of Central Tax Audit, Ahmedabad for the F.Y. 2013-14 and F.Y. 2014-15, it was observed that there was a difference in the value of services amounting to Rs.1,63,49,710/- appearing in their books of accounts when compared with the value of taxable service shown by them in the ST-3 returns. It was revealed that the respondent had provided services to M/s. Navratna Organisers & Developers Private Limited for Erection, Commissioning and Installation of Sewage Treatment Plant (STP) under “Works Contract Services” and had claimed exemption from payment of Service Tax under Serial Number 13(d) of Notification No.25/2012-ST dated 20.06.2012 which is reproduced below:

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

*(d) a pollution control or effluent treatment plant, except located as a part of a factory; or”*

2.1. It was further observed that the respondent had paid applicable service tax in respect of Erection, Commission and Installation of Sewage Treatment Plant (STP) during subsequent financial years 2015-16, and 2016-17. It was further observed that they had specifically indicated in the Work Order entered with the parties that the price included Service Tax, VAT etc. and that they had specifically shown Service Tax @5.8% in the invoice of the relevant period. Further, it was also alleged that a sewage treatment plant cannot be same as effluent treatment plant and hence the exemption claimed was not available to them. The observations of the Audit was contained in Revenue Para No. 2 of the FAR No. 66/2018-19 dated 11.09.2018.

2.2. Based on the Audit objection, a Show Cause Notice F. No. VI/1(b)-205/IA/AP-74/C-VI/17-18 dated 14.02.2019 was issued to the respondent for denial of benefit of exemption claimed under Notification. No. 25/2012-ST dated 20.06.2012 and for demanding Service Tax



amounting Rs.8,08,330/- under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Finance Act, 1994. It also proposed imposition of penalty under Section 78 of the Finance Act, 1994 on the respondent.

3. The said SCN was adjudicated by the adjudicating authority vide the impugned order wherein he has dropped the demand. The relevant Para 18.1. of the impugned order is reproduced below:

*“18.1. I find that by way of bringing in the Diffused/Surface Aerators, pH Dosing and Micro-Organisms at different levels of process of Sewage Treatment Plant (STP), Noticee has fulfilled the condition of including Mechanical, Chemical and Biological processes respectively and thus have cemented their claim that the process should be covered under the definition of Effluent Treatment Plant which has been provided in the SCN under reference. Therefore, I find that the Noticee is eligible for the exemption available under Notification No. 25/2012-ST.”*

4. Aggrieved with the impugned order, the Department has filed the instant appeal on the following grounds:

- (i) The adjudicating authority has erred to define the ETP (Effluent Treatment Plant) and STP (Sewage Treatment Plant) correctly. He has stated in his finding that the assessee has fulfilled the condition of including Mechanical, Chemical and Biological processes respectively and thus have cemented their claim that the process should be covered under the definition of Effluent Treatment Plant.
- (ii) As per the dictionary meaning of Sewage treatment plants, Sewage treatment, or domestic water treatment, is the process of removing contaminants from wastewater and household sewage, both runoffs (effluents) and domestic. It includes physical, chemical and biological processes to remove physical, chemical and biological contaminants. Whereas as per the dictionary meaning of Pollution Control or Effluent Treatment Plant, a process to convert waste water which is water no longer needed or suitable for its most use in to an effluent that can be either returned to the water cycle with minimal environmental issue. From the two definitions, it is clear that **a sewage treatment plant is not the same as an effluent treatment plant** and therefore, the services provided by the assessee are not covered by the exemption under Sr. No. 13(d) to Notification No. 25/2012-ST dated 20.06.2012.
- (iii) That Sr. no. 13(d) of Notification No.25/2012-ST dated 20.06.2012 clearly shows that the exemption is not for all effluent treatment plant but only for Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of **“a pollution control or effluent treatment plant except located as a part of a factory”**. In the instant case, the assessee has provided the services (i.e. Service used in “Sewerage Treatment Plant”) by way of erection, commissioning and installation to M/s Navratna Organisers & Developers Private



Limited for domestic purposes.

(iv) That as per Serial number 12(e) of the Notification No.25/2012-ST dated 20.06.2012, the benefit of Service Tax exemption to the services used in **“Sewerage Treatment Plant”** by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration for Sewerage Treatment Plant to the welfare of the large people of the society **if the said Services provided to the Government, a local authority or a government authority only.** In the instant case, the assessee has provided the services i.e. Service used in “Sewerage Treatment Plant” by way of erection, commissioning and installation to M/s Navratna Organisers & Developers Private Limited. Therefore, the exemption benefit of notification No. 25/2012-ST dated 20.06.2012 under Sr. No. 12(e) is also not available to the assessee.

(v) That the adjudicating authority has failed to mention the serial no. of Notification No. 25/2012-ST dated 20.06.2012 under which he has given the service tax exemption benefit to the assessee and has also not discussed the conditions of the said notification in his order.

5. Personal Hearing in the case was held on 23.09.2020. Shri Keyur Bavishi, Chartered Accountant, appeared on behalf of the respondent for the hearing. He stated that the adjudicating authority has correctly granted exemption under Notification No. 25/2012-ST.

6. The Respondent has vide email filed written submission wherein they stated that:

- i. as per the dictionary meaning of Sewage treatment plants, sewage treatment or domestic wastewater treatment, is the process of removing contaminants from wastewater and household sewage, both runoff (effluents) and domestic. It includes physical, chemical and biological processes to remove physical, chemical and biological contaminants.
- ii. as per the dictionary meaning of pollution control or effluent treatment plant, a process to convert wastewater which is water no longer needed to suitable for its most use into an effluent that can be either returned to the water cycle with minimal environmental issues or reused. The definition of Effluent Treatment Plant is very general terminology and covers all type of effluent treatment plant.
- iii. Both the processes deal with the treatment of water to make it in a reusable form.
- iv. Department two statements i.e. sewage treatment plant are not same as effluent treatment plant and the benefit of exemption under clause 13(d) of Notification No. 25/12-ST dated 20.06.2012 not available as the services provided by the assessee for domestic purpose, itself are contrary.
- v. That clause 13(d) of Notification No. 25/12-ST dated 20.06.2012 nowhere clarifies that the said services should be used for industrial purpose only.
- vi. Due to applicability of Exemption under Clause 13 (d) of Notification No. 25/2012 – ST, no service tax was collected for the FY 2013-14 and 2014-15. However, to avoid any



future litigation on the issue, they started to collect service tax for subsequent period and paid to the Government.

7. I have carefully gone through the facts of the case, the grounds of appeal made by the Department in Appeal Memorandum and submission made by the Respondent. It is observed that the issue to be decided in the instant case is as to whether the respondent is eligible for benefit of Exemption Notification No. 25/2012-ST dated 20.06.2012 under Sr. No. 13(d) for the services related to construction of Sewage Treatment Plant (STP) provided to M/s Navratna Organizers and Developers Private Limited. or not.

8. It is observed that the officers of department during the course of audit of the records of the respondent firm observed that the respondent had provided Works Contract Service to M/s. Navratna Organisers & Developers Private Limited for Erection, Commissioning and Installation of Sewage Treatment Plant (STP) and had claimed exemption from payment of Service Tax under Serial Number 13(d) of Notification No.25/2012-ST dated 20.06.2012 which is reproduced below:

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

*(d) a pollution control or effluent treatment plant, except located as a part of a factory; or a structure meant for funeral, burial or cremation of deceased;*

It is the contention of the department in the appeal that as per the dictionary meaning of Sewage Treatment Plant and Effluent Treatment Plant, both the plant are not the same and hence exemption was not available to them. The respondent has on the other hand argued that the adjudicating authority has rightly given them exemption by dropping the demand.

8.1. It is observed from the wording of Mega Exemption Notification No.25/2012-ST dated 20.06.2012 that exemption is available for services provided in respect of construction, erection etc. of a pollution control or effluent treatment plant, except those located as part of a factory. I find that the respondent has provided services in respect of construction of Sewage Treatment Plant and hence the question arises as to whether the sewage treatment is equal to effluent treatment.

8.2. It is observed that the term Sewage Treatment has been explained in the Wikipedia as under:

**"Sewage treatment** is the process of removing contaminants from municipal wastewater, containing mainly household sewage plus some industrial wastewater. Physical, chemical, and biological processes are used to remove contaminants and produce treated wastewater (or treated effluent) that is safe enough for release into the environment. A by-product of sewage treatment is a semi-solid waste or slurry, called sewage sludge. The sludge has to undergo further treatment before being suitable for disposal or application to land.



Sewage treatment may also be referred to as wastewater treatment. However, the latter is a broader term that can also refer to industrial wastewater. For most cities, the sewer system will also carry a proportion of industrial effluent to the sewage treatment plant that has usually received pre-treatment at the factories to reduce the pollutant load. If the sewer system is a combined sewer, then it will also carry urban runoff (stormwater) to the sewage treatment plant.

...

In highly regulated developed countries, industrial effluent usually receives at least pretreatment if not full treatment at the factories themselves to reduce the pollutant load, before discharge to the sewer. This process is called industrial wastewater treatment or pretreatment. The same does not apply to many developing countries where industrial effluent is more likely to enter the sewer if it exists, or even the receiving water body, without pretreatment.

Industrial wastewater may contain pollutants which cannot be removed by conventional sewage treatment.

8.3. Further, the term Effluent has been described in the Wikipedia as under:

**Effluent** is an outflowing of water or gas to a natural body of water, from a structure such as a wastewater treatment plant, sewer pipe, or industrial outfall. Effluent, in engineering, is the stream exiting a chemical reactor.

Effluent is defined by the United States Environmental Protection Agency as "wastewater - treated or untreated - that flows out of a treatment plant, sewer, or industrial outfall. Generally refers to wastes discharged into surface waters". The Compact Oxford English Dictionary defines effluent as "liquid waste or sewage discharged into a river or the sea".

Effluent in the artificial sense is in general considered to be water pollution, such as the outflow from a sewage treatment facility or the wastewater discharge from industrial facilities. An effluent sump pump, for instance, pumps waste from toilets installed below a main sewage line.

8.4. It is observed from the above explanations appearing in the Wikipedia that the term sewage treatment refers to generally removal of contaminants from municipal waste water, which may also contain industrial effluents or waste water, both treated as well as non-treated. Whereas, the term effluent includes waste water discharge from treatment plant, sewer or industrial outfall. Hence, the term effluent is much wider in scope than sewage and thereby the Effluent Treatment Plant is having much wider meaning than the Sewage Treatment Plant. As per the above explanation appearing in the Wikipedia, the Sewage Treatment Plant is meant for removal of contaminants from municipal waste water only and Effluent Treatment Plant is meant for removal of contaminants from waste water discharge from treatment plant (both sewage as well as industrial), sewer or simply industrial outfall.





9. It is therefore apparent that the terms Sewage Treatment Plant and Effluent Treatment Plant have different meaning and utility. While the Sewage Treatment Plant is meant for removal of contaminants from municipal waste water only by employing Physical, Chemical and Biological processes, the Effluent Treatment Plant is meant for removal of contaminants from waste water discharge from treatment plant (both sewage as well as industrial), sewer or simply industrial outfall. It is observed from the Mega Exemption Notification No. 25/2012 – ST dated 20.06.2012 that Entry No. 12 (e) provides for exemption to 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 – pipeline, conduit or plant for (i) water supply, (ii) water treatment, or (iii) sewage treatment or disposal. It is observed that the exemption has been provided specifically under this head for construction of sewage treatment plant if it is provided to Government or local authority. It is also apparent that the respondent do not fall under this category as the services are provided to non-government entity. As regards the exemption claimed under Entry No. 13 (d) of the Exemption Notification, it is observed that the same is eligible for services provided for construction etc. of a pollution control or effluent treatment plant, except located as part of the factory. It is observed that the adjudicating authority has not considered the wording of the entry in totality as he had not discussed the location of the sewage treatment plant, its use and whether it is part of a factory or otherwise. I am also in agreement with the contention of the appellant department that the adjudicating authority has not discussed the entry under which the exemption has been claimed and granted by him (adjudicating authority). It is a settled legal provision that the benefit under Exemption Notification has to be interpreted strictly in terms of the wording of the notification and that the onus is on the claimant (respondent) to establish the eligibility for claiming exemption. I find that the respondent has not placed on record any documents so as to establish their claim for exemption. Hence, it would be in fitness of things that the matter is remanded back to the adjudicating authority to examine relevant documents so as to establish eligibility of exemption availed. The respondent is directed to place before the adjudicating authority relevant records to establish their claim for exemption in respect of services provided to M/s. Navratna Organisers & Developers Private Limited.

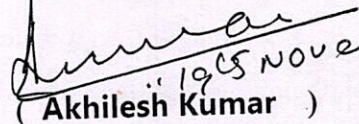
9.1. It has also been noticed by the audit that the respondent has been charging service tax from their clients during the period in question and has started paying service tax for subsequent period. The respondent has denied having charged service tax during the period for which SCN has been issued. The adjudicating authority has not recorded any findings on this issue. Hence, I find that this issue needs verification from the documents of the respondent for which the matter needs to be remanded to the adjudicating authority for causing necessary verification. The respondent is directed to place before the adjudicating authority relevant records to establish their contention that they had not charged service tax from the service providers for the services in question.



9.2. In view of the discussion made above, I find that the order passed by the adjudicating authority is not legally sustainable and required to be set aside. Further, the matter needs to be remanded back to him for verification of relevant documents to establish claim for exemption as well as to establish that the respondent has not charged service tax from the service providers.

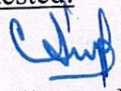
10. Accordingly, the impugned order is set aside and the appeal of the appellant department is allowed by way remand to the original authority for deciding the case afresh.

11. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।  
The appeals filed by the appellant stand disposed off in above terms.

  
(Akhilesh Kumar )  
Commissioner (Appeals) 2020..

Date: 19.11.2020.

Attested:

  
(Anilkumar P.)  
Superintendent(Appeals),  
CGST, Ahmedabad.



**BY RPAD / SPEED POST**

To

The Deputy Commissioner,  
CGST, Division-IV,  
Ahmedabad North.

Appellant

M/s Flow Dynamics India,  
8A, Ashwamegh Industrial Estate,  
NutanNagrik Bank lane,  
Changodar, Ahmedabad.

Respondent

**Copy to:**

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad North.

(for uploading the OIA)

4. Guard File.
5. P.A. File.