आयुक्त का कार्यालय) ,अपीलस(
Office of the Commissioner,
केंद्रीय जीएसटी, अहमदाबाद आयुक्तालय
Central GST, Appeal Commissionerate-Ahmedabad
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan,Revenue Marg,Ambawadi,Ahmedabad-380015
. ☎ 26305065-079 : **टेलेफैक्स** 26305136 - 079 :
Email- commrappl1-cexamd@nic.in

DIN-20210764SW0000813388

स्पीड पोस्ट

क फाइल संख्या : File No : GAPPL/COM/STP/311/2020-Appeal-O/o Commr-CGST-Appl-Ahmedabad 18667 TO 18671

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-011/2021-22**
दिनाँक Date : **23.06.2021** जारी करने की तारीख Date of Issue : **05.07.2021**

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

ग Arising out of Order-in-Original Nos. **03/ADC/2020-21/MLM dated 03.06.2020**, passed by Additional Commissioner, Central GST & Central Excise, Ahmedabad-North

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

Appellant-. - M/s Praveg Communication ltd.

Respondent- Additional Commissioner, Central GST & Central Excise, Ahmedabad-North

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 पूवोक्त 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, 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 :

(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 मामलें 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 डयूटी केडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35–बी/35–इ के अंतर्गतः–

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 2nd **माला, बहुमाली भवन ,असरवा ,गिरधरनागर,अहमदाबाद** –380004

(a) 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 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 leasf should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल ओदश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता हैं।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner not withstanding 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 अनुसूचि–1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रू.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention in invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट), के प्रति अपीलो 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

This appeal has been filed by M/s. Praveg Communications (India) Ltd. (formerly known as M/s. Praveg Communications Ltd.,), 101, Shanti Arcade, 132 Ft. Ring Road, Naranpura, Ahmedabad-380013 *(henceforth referred as "appellant")* against the Order-In-Original No. 03/ADC/2020-21/MLM dated 03.06.2020 *(henceforth referred as "impugned order")* issued by the Additional Commissioner, Central GST & Central Excise, Ahmedabad-North *(henceforth referred as "adjudicating authority")*.

2. The facts of the case, in brief, are that the appellant was engaged in providing Taxable Services viz., Advertising Agency Service, Rent-a-Cab Service, Scheme Operator Service, Security/Detective Agency Service, Manpower Recruitment/supply Agency Service, Event Management Service, Business Auxiliary Service, Business Exhibition Service, Transport of Goods by Road/Goods Transport Agency Service, Works Contract Service, Design Service other than Interior Decoration and Fashion Designing Service, Tour Operator Service and holding Service Tax Registration No.AADCP5421AST001 till 12.07.2005 and subsequently applied for Centralized Registration which was approved w.e.f. 09.10.2014.

3(i). During the course of audit of records of the appellant, by officers of CERA, for the period from F.Y. 2013-14 to 2015-16, it was observed that during the period F.Y. 2013-14, the appellant had rendered services to various parties and paid Service Tax @ 4.8% classifying their service as "Works Contract Service" *(henceforth referred as "WCS")* wherein no sale of goods was found involved in relation to the service rendered. The invoices provided by the appellants for the period 2013-14 revealed that the charges collected by the appellant were towards "conceptualizing, designing & execution of stall". Therefore, it appeared to the CERA Audit team that the service rendered by the appellant can not be classified under WCS and they were required to pay service tax @ 12.36% under Interior Decorator's Service. In view of the noticed facts, the data for the period F.Y. 2012-13 was also sought from the appellant from which it was noticed that they had liability for payment of service tax in that period also which has not been complied.

3(ii). Accordingly, a Show Cause Notice dated 15.11.2017 *(henceforth referred as "SCN")* was issued from F.No.STC/15-22/OA/2017 by the Additional Commissioner, CGST, Ahmedabad North, to the appellant proposing :

> ***(a)*** *classification of service as bundled service of "Interior Decorator's Service" for the period from 01.04.2012 to 30.06.2012 and from 01.07.2012 onwards as taxable service under Clause 51 of Section 65B of the Finance Act, 1994;*

(b) demand of service tax amounting Rs.1,06,37,604/- for the period 2012-13 to 2013-14 under proviso to Section 73(1) read with Section 68 alongwith interest under Section 75 of the Finance Act, 1994;

(c) imposition of Penalties under Section 76, 77(2) and 78 of the Finance Act, 1994 upon the appellant.

3(iii). The said SCN was adjudicated vide impugned order wherein the adjudicating authority **(a)** confirmed the service rendered by the appellant to be classified as bundled service of "Interior Decorator's Service" as defined under Section 65(105)(q) of the Finance Act, 1994 for the period from 01.04.2012 to 30.06.2012 and from 01.07.2012 onwards to be taxable service under Clause 51 of Section 65B of the Finance Act, 1994; **(b)** confirmed the demand of service tax along with interest as proposed under SCN; **(c)** dropped the penalty proposed to be imposed under Section 76 of the Finance Act, 1994 and **(d)** imposed penalties under Section 77(2) and Section 78 of the Finance Act, 1994 upon the appellant on the ground that :

(A) the charges collected were towards design, conceptualizing and execution of stall in various events and there was not transfer of property in the goods involved;

(B) as per ledger of retail invoice register there was no sale of goods related to WCS rendered by the appellant;

(C) the sample work order was silent about sale of goods;

(D) the appellant failed to provide any documentary evidence either at the time of audit or at any time thereafter confirming that the contract executed involved sale of goods;

(E) that the service provided by the appellant form two parts. The first part involves planning, designing or beautification of space by way of advice to be implemented only after the approval of their customers and the second or remaining part is the execution of the design where tangible goods required for the stall like internal wiring, lighting, decorations, equipments like projectors, tables, chairs, sofa sets etc. as already approved. It is trade practice that after the exhibition is over, the tangible goods like lighting, decorations, projectors, tables, chairs, sofa sets etc. are removed from the stall by the service provider and reused in the future contracts and thus transfer of goods can not be said to be involved in such service rendered.

4. Being aggrieved with the impugned order, the appellant has filed the instant appeal on the grounds that :

(i) The SCN has not made any base to categorize the ancillary service Supply of Tangible Goods Service based on which the principle of bundled service is invoked;

(ii) When the SCN used language which pre-judges the issue, it result in violation of principles of natural justice and relied upon various judgements in their supports;

(iii) The impugned order is non speaking as the adjudicating authority passed the impugned order without appreciating the facts as well as oral and written submissions made by the appellant and not given any findings on the various judgements relied upon by them;

(iv) The impugned order passed is non-speaking and hence in gross violation of principles of equity, fair play and natural justice;

(v) *The adjudicating authority has failed to comprehend and give any substantive reasoning for confirming the demand of service tax under the category of Interior Decorator Service for the period from 01.04.2012 to 30.06.2012 and under Declared Service for the period after 01.07.2012;*

(vi) *The turnkey project were assigned to the appellant by their customers for designing, making layouts, execution and supervision of temporary structures in compliance of the terms of the agreements;*

(vii) *As per the terms of the agreement, the appellant have to undertake all the activities under instruction of professional advisor and the Director General, SAG representative;*

(viii) *The turnkey project was inclusive of service as well as the materials such as cloth, plywood, bolt, nuts, flags etc., required for the preparation of the stall;*

(ix) *The materials used in setting up of exhibition of stall gets transferred to the customers and the sale of such materials to customers cannot be subjected to service tax;*

(x) *The possession of materials gets transferred to the customers and hence, the definition of sales gets satisfied in the present case even with reference to service tax and the appellant relied upon the judgement of Hon'ble High Court of Karnataka in the case of Modi Xerox Ltd Vs State of Karnataka, 1999 (114) STC 424 (Kar);*

(xi) *The setting up of exhibition stall is a turnkey project assigned to the appellant which is rightly classified under works contract service and service tax is rightly paid under Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007;*

(xii) *The contract provides for the supply of goods as well as labour would be a works contract and to the extent the property in goods actually passes from the contractor to the principal and the transaction would come within the purviews of the extended definition of sale viz. transfer of property in goods whether as goods or in some other form;*

(xiii) *The appellant relied upon the judgement of Bharat Sanchar Nigam Ltd Vs Union of India 2006 (3) SCC 1 wherein article 366(29A) was examined and analyzed in depth and it was held that the bifurcation of an activity into sale and service is permissible in the case of works contracts;*

(xiv) *In view of Notification No. 32/2007-ST dated 22.05.2007 and in terms of Rule 3(3), the option of the composition scheme was exercised prior to the payment of service tax and the appellant rightly availed the composition scheme;*

(xv) *Works Contract Composition Scheme Rules pertain to Works Contract Service which is notified as a separate taxable service w.e.f. 01.06.2007 by insertion of Section 65(105)(zzzza) in the Finance Ac, 1994;*

(xvi) *The nature of work undertaken by the appellant is clearly determinable from the terms of the contract/agreement, wherein it is specified that there is both provision of service as well as supply of material such as cloth, hardware, plywood, flags;*

(xvii) *The total purchase of goods made during impugned period were amounting to Rs.6,72,36,717/- for F.Y. 2012-13 and Rs.7,75,82,624/- for F.Y. 2013-14 which were used in providing output services including works contract service and separate value of material is not determinable and hence rightly opted for payment of service tax under the composition scheme;*

(xviii) *The demand of service tax under the category of taxable service under section 65B(41) of the Finance Act, 1994 @ 12.36% w.e.f. 01.07.2012 is bad in law as the appellant are engaged in providing services of conceptualizing, designing and setting up of exhibition stall for customers as per their requirement both supply of material as well as service and not engaged in providing service simpliciter in terms of the Act;*

(xix) *The nature of service has remained unchanged in the Negative List regime;*

(xx) The adjudicating authority filed to take into consideration the terms of the agreement submitted by the appellant which clearly lays down that both material and service are involved for the set up of stall for customers;

(xxi) The adjudicating authority confirmed the demand of service tax under the category of Interior Decorator's service on the basis of nomenclature mentioned in the invoice raised by the appellant is wholly incorrect and bad in law;

(xxii) There is no suppression of facts in the instant case, since the department was well aware of the facts in as much as the appellant filling periodical returns in time and departmental audit was undertaken in the earlier period wherein no dispute was raised and issue involves interpretation of law and hence, the invocation of extended period of limitation is not justified and relied upon various judgement in support of their contention;

5. Personal hearing in the matter was held on 18.03.2021 through virtual mode. Ms. Madhu Jain, Advocate, attended the hearing on behalf of the appellant. She re-iterated the submissions made in the appeal memorandum.

6. I have carefully gone through the facts of the case available on records, grounds of appeal in the Appeal Memorandum as well as oral submissions made at the time of personal hearing. I find that the issue to be decided in the instant case is whether the appellant is liable to pay the service tax as confirmed under the impugned order or whether they have correctly paid the service tax under WCS. The demand pertains to period F.Y. 2012-13 and F.Y. 2013-14.

7(i). Since the issue pertains to prior to negative list regime (i.e. prior to 01.07.2012 and negative list regime (since 01.07.2012), it would be prudent to analyze the legal provisions under both regime.

7(ii). In pre-negative list regime, i.e. prior to 01.07.2012, the WCS had been defined under Section 65(105)(zzzza) of the Finance Act, 1994 and was read as under :

"Taxable Service" means any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation.— For the purposes of this sub-clause, "works contract" means a contract wherein,—

(i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

(ii) such contract is for the purposes of carrying out,—

(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

(c) construction of a new residential complex or a part thereof; or

(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects"

[Emphasis supplied]

7(iii). In the negative list regime, the WCS has been defined under Section 65B(54) of the Finance Act, 1994 and reads as under :

"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"

[Emphasis supplied]

7(iv). Perusal of the above definitions in both the regime, i.e. prior to 01.07.2012 and w.e.f. 01.07.2012, clearly reveal that a contract can be considered as Works Contract, only when the transfer of property in goods is also involved in the said contract. It had been observed by the CERA Audit team, from the invoices provided by the appellant, that the invoices were towards the "conceptualizing, designing and execution of stall". Thus, it did not clearly show the involvement of transfer of goods, which is the prime & foremost condition for considering such activity as WCS. Absence of such a mandatory and important element in WCS (as claimed by the appellant), has led the adjudicating authority to believe that the contention of the appellant is not true and the activity can not be considered to be WCS. Just writing a word "Work Contract" in the invoice raised don't make the activity of the appellant to be considered to be WCS unless the transfer of property in goods is also involved. For considering an activity to be WCS, the actual activity of the person is required to be looked into.

7(v). The appellant has provided a photocopy of the letter dated 22.11.2013 of the Sports, Youth and Cultural Activity Section of the Secretariat, Gandhinagar addressed to them. The said letter says that a stall of 216 Sq,Mt. size has been allocated at Hall No.4 for the purpose of exhibition on the occasion of 150th birth anniversary of Swami Vivekanand. The 3rd para of the said letter says that the a turnkey based work is allocated to the appellant for preparation of that stall of "A" category according to the "Yaadi" (letter/circular/summary) no.Falam/102012/1370/B dated 12.09.2012 of the Information Department. Thus, the said letter refers some other correspondence which has not been provided by the appellant. It is not coming out from the letter dated 22.11.2013 that the Sports, Youth and Cultural Activity Section of the Secretariat, Gandhinagar will also pay to own the goods used in the said stall. In other words, it is not clear from the said letter

that the ownership of the goods used in the said stall will be transferred to the Sports, Youth and Cultural Activity Section of the Secretariate, Gandhinagar or service recipient.

7(vi). The appellant has produced some invoices showing the purchase of goods. But it is observed that the purchase has been made by the appellant and from that, it is not clear whether the said goods were transferred to the Service Recipient or not. The appellant also failed to provide any document which shows that the goods were transferred to the service recipient or sold to the service recipient. A mere production of purchase bill by the appellant (which is in their own name) does not support their claim that the ownership of the said goods were transferred. The appellant failed to provide any document to support their contentions raised in that respect and therefore I am not inclined to accept their contention that the transfer of property of goods involved in the service rendered by them. Thus, I am not inclined to accept the claim of the appellant that the service rendered by them was WCS. When the service rendered by the appellant is not considered to be a WCS, they are liable to pay the service tax at full rate as confirmed under the impugned order. Therefore, the impugned order is upheld so far as it relates to demand of service tax alongwith interest thereon.

7(vii). The appellant has submitted Form 205 (Self Assessment under Section 33 of the Gujarat Value Added Tax Act, 2003) pertaining to the period 2012-13 and 2013-14. But from the said returns it can not be verified, that the goods used in the services rendered by them, were transferred to the Service Recipients.

7(viii). Installation of a stalls are never permanent and always temporary in nature and place of the stalls also always change. Therefore in general practice, nobody used to own and pay for the purchase of goods used in such stalls, as it is not viable to own and keep the goods each time the stalls are installed at different places. It is a trade practice that whenever a contract for installation of stall is given, the ownership of the goods used in the stall remain with the owner (who provided such goods) of the said goods and whenever, the stalls are removed, the owner take back the goods used in the stalls. Therefore also, the contentions of the appellant are not acceptable and are rejected.

8. The case laws of M/s. Bharat Sanchar Nigam Ltd., M/s. Idea Mobile Communication Ltd., M/s. Modi Xerox Ltd. etc., relied upon by the appellant are not relevant to the present case as the facts in those cases are different from the facts of the case on hand and all these cases are for the period prior to negative list regime. For example, in the case of M/s. Bharat Sanchar Ltd. it was held that the bifurcation of an activity into sale and service is permissible; in case of M/s. Idea Mobile Communications

Ltd., it was held that the service tax is not leviable on the item on which sales tax has been collected; in case of M/s. Modi Xerox Ltd. is was pertaining to the use of material during the course of providing maintenance service in Annual Maintenance Contract. Thus, the facts involved in those cases are different from the facts of the present case.

9. The appellant is in the service tax regime since long and therefore, it is not acceptable that they were not aware of the provisions of law in the matter. They are working under self-assessment regime where onus is on themselves for correct assessment and payment of tax. Thus, the provisions of law have been correctly invoked by the adjudicating authority for imposition of penalties. In result, the impugned order in respect of imposition of penalties is also upheld.

10. In view of the above, I reject the appeal filed by the appellant and uphold the impugned order.

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.

23rd June, 2021.

(Akhilesh Kumar)
Commissioner (Appeals)

Date : .06.2021.

Attested

05/07/21

(Jitendra Dave)
Superintendent (Appeals),
CGST, Ahmedabad.

BY R.P.A.D. / SPEED POST TO :
M/s. Praveg Communications (India) Ltd.,
(formerly known as M/s Praveg Communications Ltd.,)
101, Shanti Arcade, 132 Ft. Ring Road,
Naranpura, Ahmedabad- 380013.

Copy to:

1. The Principal Chief Commissioner, Central Excise, Ahmedabad Zone.
2. The Commissioner, Central GST & Central Excise, Ahmedabad-North Comm'rate.
3. The Addl.Commissioner, Central GST & Central Excise, Ahmedabad-North Comm'rate.
4. The Asstt.Commissioner (System), CGST, Ahmedabad-North Comm'rate.
5. The Asstt.Commissioner, CGST & Cen.Excise, Division-VII, Ahmedabad-North Comm'rate.
6. Guard File.
7. P.A. File.