



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-20220264SW000000D7E7

6036-40

**स्पीड पोस्ट**

- क फाइल संख्या : File No : GAPPL/COM/STP/827/2021 -Appeal-O/o Commr-CGST-AppI-Ahmedabad
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-64/2021-22**  
दिनांक Date : **07.02.2022** जारी करने की तारीख Date of Issue : **08.02.2022**  
आयुक्त (अपील) द्वारा पारित  
Passed by **Shri Akhilesh Kumar, Commissioner (Appeals)**
- ग Arising out of Order-in-Original Nos. **35/JC/MT/2020-21** dated **19.01.2021**, passed by the Joint Commissioner, Central GST & C. Ex., Ahmedabad-North.
- घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent  
**Appellant-** M/s. Sorath Builders, 92, City Centre, Nr. Swastik Cross Road, Navrangpura, Ahmedabad-380009.

**Respondent-**The Joint 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।

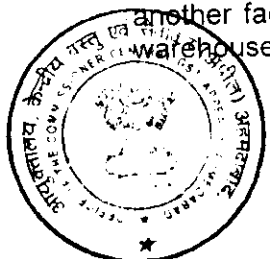
Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way:

भारत सरकार का पुनरीक्षण आवेदन :

**Revision application to Government of India :**

- (i) 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 मामलों 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 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 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.

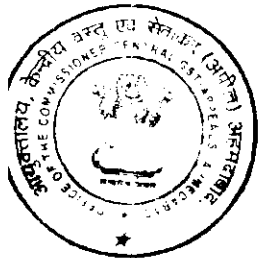
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-  
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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।

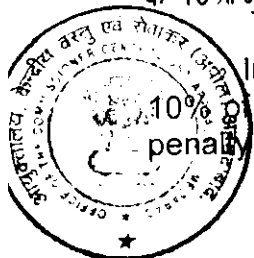
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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



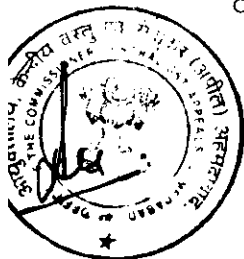
**ORDER IN APPEAL**

The present appeal has been filed by M/s. Sorath Builders, 92, City Centre, Near Swastik Cross Road, Navrangpura, Ahmedabad-380009 (hereinafter referred to as '**the appellant**') against the OIO No: 35/JC/MT/2020-21 dated 19.01.2021 (in short '**impugned order**') passed by the Joint Commissioner, Central GST, Ahmedabad North (hereinafter referred to as '**the adjudicating authority**').

2. The facts of the case, in brief, are that during a search conducted by the Officers of Preventive, erstwhile Service Tax Ahmedabad, at the premises of the appellant, records were seized under Panchnama dated 09.07.2015 and statements of Shri Dineshkumar Laxmanbhai Patel, Partner of the appellant firm, was recorded on 09.07.2015 & 21.09.2015. Investigation carried out by the officers revealed that the appellant, during the period F.Y. 2010-11 to F.Y. 2014-15, had provided 'Works Contract' service to Gujarat State Police Housing Corporation Ltd. (in short 'GSPHCL') on which they were not discharging their tax liability. In their Books of Accounts and Form 26AS, the income of Rs.15,80,28,991/- was shown as received from GSPHCL during the period F.Y. 2010-11 to F.Y. 2014-15 and based on this income, service tax liability of Rs.57,67,136/- was arrived by the department. A Show Cause Notice (SCN) No.STC/4-46//O&A/15-16 dated 14.10.2015, was, therefore, issued proposing to consider the income of Rs.15,80,28,991/- as taxable for levy of service tax under 'Works Contract' service falling under Section 65(105) (zzzza) of the Finance Act, 1994, upto 30.06.2012 and under 'Service' in terms of Section 65B(44) read with Section 65D of the Finance Act, 1944 w.e.f 01.07.2012; proposing recovery of service tax demand of Rs.57,67,136/- u/s 73(1) read with Section 68 of the F.A, 1994, by invoking extended period of limitation; demanding interest u/s 75. Penalty under Section 77(2) and penalty under Section 78 was also proposed. The said notice was adjudicated vide the impugned order, wherein the income of Rs.15,80,28,991/- was considered taxable and service tax demand of Rs.57,67,136/- alongwith interest was confirmed. Penalty of Rs.10,000/- under Section 77(2) and penalty of Rs.57,67,136/- under Section 78 was also imposed.

3. Aggrieved by the impugned order, the appellant filed the present appeal contending on following grounds;

- o Construction of Police Staff Quarters for GSPHCL is for residential purpose of State Police Force and should fall in the category of residential construction and not under construction of civil structures or buildings primarily for commerce or industry. The statute further excludes the residential complex construction for personal use.
- o GSPHCL is a corporation set-up by government of Gujarat to undertake projects relating to construction/maintenance and repairs of residential and non-residential buildings as per the directives and requirement of State government and is working on no profit and no loss basis. These residential apartments are handed over to the police personal either for free or by charging a nominal rent.
- o Even if the services are classified under works contract, it would fall under exclusion category. They placed reliance on the case laws given below and stated that all these orders are binding on the adjudicating authority. They also



stated that the Circular No.116/10/2009-ST dated 15.09.2009 is not applicable to their case.

- Vishal Infrastructure-2013(12) TMI 906 –CESTAT Bangalore
  - S.Kadirvel – 2018 (6) TMI 926-CESTAT Chennai
  - Sima Engineering Constructions - 2018 (5)TMI 405-CESTAT Chennai
  - Kurana Engineering- 2011(21) STR 115 (Tri-Ahmd)
- o The services rendered for non-commercial purposes during the period 2010-11, 2011-12 and upto June-2012 were excluded under Section 65(105)(zzzh), hence not taxable. Similarly, the services rendered after July, 2012 are fully exempted under Notification No.25/2012-ST, vide Entry No.12 (a) & (c).
  - o They claimed that the OIO is silent on the appropriation of Rs.8,20,563/- already paid, during investigation, against the confirmed demand, though at para 30, the adjudicating authority acknowledges this submission. As the demand is infructuous, the tax, interest penalty and pre-deposit already paid, should be refunded.
  - o Demand is time barred as department was fully aware of the matter since various correspondence were made by the construction associations to the department, hence suppression cannot be alleged. Reliance placed on judgment in the case of Continental Foundation Jt Venture -2007 (216) ELT 177 (SC), Damnet Chemicals Pvt. Ltd. -2007 (216) ELT 3 (SC).
  - o Interest not imposable in terms of judgment in the case of Pratibha Processors – 1996 (88) ELT 12 (SC).
  - o There was no intention to evade payment of tax and mere failure to disclose the taxable income would not amount to suppression hence penalty under Section 78 is not imposable. Similarly, they have been paying service tax and regularly filing ST-3 returns hence penalty under Section 77 is also not imposable. Even otherwise simultaneous penalty under Section 78 & 77 cannot be imposed. In terms of Section 80 they are eligible for waiver of penalty as there was reasonable cause for the failures alleged. They also placed reliance on 2004(174) ELT 19 (Tri-LB); 2004(170) ELT 417 (Tri-Del), Star Neon Singh – 2002 (141) ELT 770 (Tri-Del).

4. Personal hearing in the matter was held on 12.11.2021, through virtual mode. Shri Nitesh Jain, Chartered Accountant, appeared on behalf of the appellant. He reiterated the submissions made in the appeal memorandum. The appellant subsequently vide letter dated 06.12.2001 submitted the copies of contracts entered with GSPHCL and vide letter dated 21.01.2022, they submitted a copy of OIA No.AHM-EXCUS-003-APP-0176-17-18 dated 29.12.2017, passed in their own case wherein GSPHCL has been adjudged as Government Authority and the work done for them was held to be falling under the activities listed in Article 243W of the constitution.

5. I have carefully gone through the facts of the case, the impugned order passed by the adjudicating authority, submissions made in the appeal memorandum as well as the submissions made at the time of personal hearing, the copies of contracts entered with GSPHCL and the aforesaid OIA dated 29.12.2017. The issue to be decided under the present appeal is whether the service rendered by the appellant to GSPHCL during 2010-11 to F.Y. 2014-15, is covered under works contract service or otherwise and



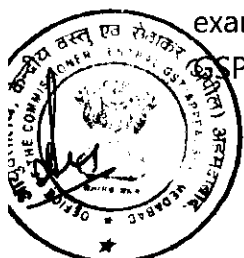
whether they are eligible for benefit of exemption under Notification No.25/2012-ST dated 20.6.2012 ?

6. It is alleged in the SCN that the appellant were providing construction service to GSPHCL hence were classifiable under Works Contract Service defined under Section 65 (105) (zzzza) of the Finance Act (F.A), 1994 upto 30.06.2012 and since these services were not executed through turnkeys/ EPC mode, hence were not exempted under CBEC Circular No.116/10/2009-ST dated 15.9.2009. The appellant on the other hand are contending that the services rendered by them to GSPHCL was towards construction of residential complex for police force hence should be classified under 'Construction of Complex' service defined under Section 65(105)(zzzh) of the F.A.,1994 till 30.06.2012 and since these complexes are used for non-commercial purpose, such construction activity is excluded by the statute. For post negative list based regime, their services are exempted under Notification No.25/2012-ST dated 20.6.2012.

7. It is observed that the demand of Rs.57,67,136/- was arrived considering the income of Rs.15,80,28,991/-received by the appellant during the F.Y.2010-11 to F.Y. 2014-15, towards the services rendered to GSPHCL. Thus, the demand period covers pre and post negative list based regime. I have gone through the eleven contracts and the break-up of work done for GSPHCL under these contracts, submitted by the appellant, for the disputed demand. I find that the entire demand has been worked out on the basis of these eleven (11) contracts. Out of these eleven contracts, in nine contracts mentioned at Sr. No. 01 to 09 of the list, the appellant were required to carry out construction of Police Staff residential quarters. Of these nine (9) contracts, the contract dated 09.08.2010 undertaken at project area Rajula, Amreli (mentioned at Sr.No.8) covers the period post negative list and rest of the contracts are prior to negative list. Further, under the contract mentioned at Sr. No. 10 (Contract dated 18.11.2010), the appellant were required to construct entrance gate, guest house, security cabin, flag post, utility room, electrical sub-stations, vehicle parking etc for Surat Lajpore Jail, which pertains to pre-negative list regime. The contract listed at Sr. No. 11, was for carrying out renovation & furniture work for Pesticide Laboratory at Gandhinagar, wherein the period covered is post negative list.

7.1 The adjudicating authority, for the pre-negative list period, has classified the construction service undertaken by the appellant as 'Works Contract' service and for the post negative list based regime, under the definition of 'Service' and in terms of Section 65B (44) read with Section 66D of the Finance Act, 1994. The appellant, however, are now claiming classification under 'Construction of Complex' service defined under Section 65(105)(zzzh) of the F.A.,1994 and for the post negative list regime, they are also claiming exemption under Notification No.25/2012-ST dated 20.6.2012.

7.2 To examine the above claim, I have gone through the impugned order. I find that the appellant before the adjudicating authority have never claimed that their services would fall under Section 65(105)(zzzh), therefore obviously this aspect was not examined by the adjudicating authority. Further, some of the services rendered to GSPHCL were during post negative list therefore, I find that benefit of exemption as



claimed by the appellant also needs to be examined after deciding the classification of services rendered to GSPHCL, under each contract. Consequently, I find that the entire demand has to be examined as per the relevant provisions prevailing during pre and post negative list regime, also considering the exemptions claimed by the appellant.

**7.3** Another argument put forth by the appellant is that the OIO is silent on the appropriation of Rs.8,20,563/- paid by them vide Challan dated 23.10.2015, against the confirmed demand. I have examined para-30 of the OIO, wherein appellant's above contention is mentioned as part of their defense reply filed before the adjudicating authority, however, the impugned order is silent on this contention, though this matter was raised before the adjudicating authority. Therefore, this aspect also needs to be re-examined.

**8.** In view of above discussion, I find that the dispute related to contract-wise classification of service, benefit of exemption claimed under Notification No.25/2012-ST dated 20.6.2012 and appropriation of Rs.8,20,563/- paid by appellant vide Challan dated 23.10.2015, needs to be examined afresh. I, therefore, remand the matter back to the adjudicating authority for de-novo adjudication.

**9.** In view of the above discussions and findings, the impugned order is set-aside by way of remand.

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

Attested

*Rekha Nair*

(Rekha A. Nair)  
Superintendent (Appeals)  
CGST, Ahmedabad

**By RPAD/SPEED POST**

To,  
M/s. Sorath Builders  
92, City Centre, Nr. Swastik Cross Road,  
Navrangpura,  
Ahmedabad-380009

The Joint Commissioner  
CGST, Ahmedabad North  
Ahmedabad

*Arunas*  
75 February 2022  
(अखिलेश कुमार)  
आयुक्त(अपील्स)  
Date: 02.2022

**Appellant**

**Respondent**

**Copy to:**

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
3. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.  
(For uploading the OIA)
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