



सत्यमेव जयते

आयुक्त का कार्यालय

Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय

Central GST, Appeals Ahmedabad Commissionerate  
जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद-380015

GST Bhavan, Ambawadi, Ahmedabad-380015

Phone: 079-26305065 - Fax: 079-26305136

E-Mail : [commrappl1-cexamd@nic.in](mailto:commrappl1-cexamd@nic.in)

Website : [www.cgstappealahmedabad.gov.in](http://www.cgstappealahmedabad.gov.in)



**By SPEED POST**

DIN:- 20240364SW000000B99C

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/5245/2023 / 236u - 68
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-279/23-24 and 15.03.2024
(ग)	पारित किया गया / Passed By	श्री ज्ञानचंद जैन, आयुक्त (अपील) Shri Gyan Chand Jain, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of Issue	19.03.2024
(ङ)	Arising out of Order-In-Original No. 175/JC/LD/2022-23 dated 31.3.2023 passed by Joint Commissioner, CGST & Central Excise, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Dhara Construction & Earth Movers (Prop. Yogesh Jashubahi Patel), 419, Fortune Business Hub, Science City Road, Sola, Ahmedabad-380060

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, 4<sup>th</sup> Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :-

(क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में 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 भीतरमूल-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 संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

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

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

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

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2<sup>nd</sup> माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा 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 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 और संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

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

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में 'अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

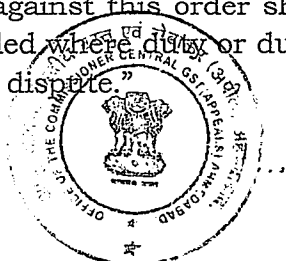
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

(6) (i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो 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**

M/s. Yogesh Jashubhai Patel, 419-Fortune Business Hub, Science City Road, Sola Road, Sola, Ahmedabad -380060 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 175/JC/LD/2022-23 dated 31.03.2023 (referred in short as '*impugned order*') passed by the Joint Commissioner, Central GST, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant is having Service Tax Registration No. AFKPP5735QSD001.

2. The facts of the case, in brief, are that on the basis of the data received from the Central Board of Direct Taxes (CBDT) for the F.Y. 2015-16 and 2016-17, it was noticed that the appellant has declared less taxable value in their ST-3 Return compared to the Sales / Gross Receipts from services shown in their ITR. The service tax liability of Rs.1,60,45,811/- was, therefore quantified considering the differential income of Rs.11,21,37,132/- as taxable income.

**Table-A**

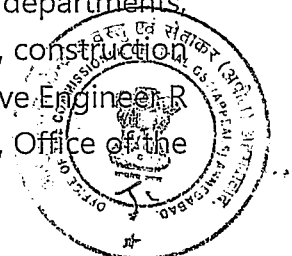
<b>F.Y.</b>	<b>Value Difference in ITR &amp; STR</b>	<b>Service tax payable</b>
2015-16	7,06,12,739/-	98,51,850/-
2016-17	4,15,24,393/-	61,93,960/-
<b>TOTAL</b>	<b>11,21,37,132/-</b>	<b>1,60,45,811/</b>

2.1 A Show Cause Notice (SCN) No. STC/15-187/OA/2021-22 dated 23.04.2021 was issued to the appellant proposing recovery of service tax amount of Rs. 1,60,45,811/- not paid on the value of income received during the F.Y. 2015-16 & 2016-17 along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively, penalties under Section 76, Section 77 and Section 78 of the Finance Act, 1994 were also proposed.

2.2 A pre-consultation hearing was fixed on 23.04.2021 before issuance of SCN however, the appellant did not attend the same. The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs. 1,60,45,811/- was confirmed alongwith interest. Penalty of Rs. 10,000/- was imposed under Section 77 and penalty of Rs. 1,60,45,811/- was also imposed under Section 78. The penalty under Section 76 was dropped.

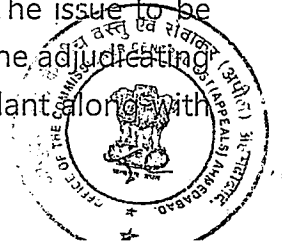
3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, on the grounds elaborated below;

- The appellant claim that he is the proprietor of M/s. Dhara Construction & Earth Movers having PAN: AFKPP5735Q and having Service Tax Reg. No. AFKPP5735QSD001. They are in the business of providing construction services to the difference departments of state government only. The nature of work includes construction of government quarters, excavation for irrigation departments, construction of canal and sub-canals etc. They claim they in 2015-16, construction related services was provided to government department like Executive Engineer R & B, Gujarat State Land Development Corporation, Kadi Municipality, Office of the



Ex. Engineer Drainage Division, Sardar Sarovar Narmada Nigam Limited, Sujlam Suflam Division-2, Executive engineer Ahmedabad Irrigation Department, Salinity Control Division Porbandar. In 2016-17 construction related services was provided to government departments like Ahmedabad Store Division, Bareja Nagarpalika, Dholka Nagarpalika, Kadi Municipality, Sardar Sarovar Narmada Nigam Ltd., The Agriculture Produce Market, Executive engineer Ahmedabad Irrigation Department., Viramgham Nagarpalika, Executive Engineer R & B. All the work contracts were for construction related activities and services were provided to government departments only.

- As services were provided to government departments only, they were availing the service tax exemption provided in mega exemption Notification No. 25/2012 (clause 12).
  - The SCN was issued by the departments on 23/04/2021, i.e. during the period of second wave of Covid-19 and at that time no physical hearing was possible and was not allowed by the department. So, the reply of SCN was submitted via email on 19/05/2021 to 'oahmedabad2@gmail.com', wherein, the required documents were supplied to prove that the services were made to state government departments only and hence they were not liable to service tax. Documents like Balance Sheet and Profit & Loss Account, Audit Report, 26AS, Copy of Work Orders were also submitted but the same were not considered while adjudicating the case.
  - After issuing SCN, notices and reminder notices for personal hearing was issued by the department at registered office address of Dhara Construction & Earth Movers i.e at 284, Shukan Mall, Science City Road, Sola, Ahmedabad-380060. This office was is not owned by them but for business purpose they were using another address from where business was carried on. As the address was pending to be updated in service tax record, so notices were sent to above address which were not received by them. Further after November-2022 they had sold their other office and had shifted to new office at 419, Fortune Business Hub, Science City Road Sola, Ahmedabad-380060 " in April-2023. During this period notices were received from departments for personal hearing on different dates i.e 18/05/2022, 19/01/2023, 23/02/2023 and 28/03/2023. But due to non-availability they were not aware about the notices received for personal hearing.
  - In 26AS also it is clear that they had not done work other than state government departments. As TDS has been deducted from government departments only.
4. Personal hearing in the appeal matter was held on 06.03.2024. Shri Kalpesh Patel, Chartered Accountant appeared for personal hearing, on behalf of the appellant. He reiterated the contents of the written submissions and requested to allow the appeal.
5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the appeal memorandum and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of **Rs.1,60,45,811/-** against the appellant along with



interest and penalty, in the facts and circumstance of the case is legal and proper or otherwise. The demand pertains to the period **F.Y 2015-16 and 2016-17**.

**5.1** I have gone through the documents like P&L Account, STR-3 returns, copy of contracts submitted by the appellant. The appellant has submitted the ST-3 Return in respect of the period (Oct to March) of F.Y. 2015-16 and returns for the period (April to Sept) and (Oct to March) of the F.Y. 2016-17. As per the ST-3 Returns submitted they have declared following taxable income but no tax was paid as they claimed exemption under clause 12(e) and clause 13(a) & 13(b) of Notification No. 25/2012-ST dated 20.06.2012. Detail of taxable value reflected in ST-3 return is given below;

**TABLE-A**

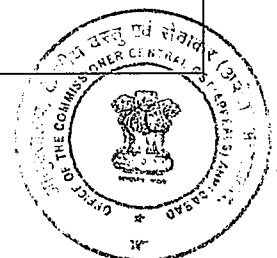
ST-3	2015-16	2016-17
April - September	Not provided	4,86,81,087
Oct-March	3,26,08,650	1,20,92,358
<b>Total</b>	<b>3,26,08,650</b>	<b>6,07,73,445</b>
P&L	7,35,97,196	6,57,85,496

**5.2** Further, from the P&L account it is noticed that the appellant in the F.Y. 2015-16 has shown the income of Rs.7,35,97,196/- as income from Contract under Direct Income head. Similarly, in the F.Y. 2016-17 they have shown income of Rs. 6,57,85,496/- as contract income. On comparison of the above income with the values declared in ST-3 Return drastic difference is noticed for which the appellant has not come up with any justified reasoning.

**5.3** Secondly, the appellant has contended that since the income reflected in ITR pertains to the construction services rendered to the government department, no taxes were required to be paid as they have claimed exemption under mega notification. I have gone through the contracts and I find that these contracts were executed by the appellant for following activities:

**Table-B**

Sr.No.	Govt Department	Agency/	Nature of Work	Remarks
01	Bareja Nagarpallika		C.C. Road Restoration, Repairing and Construction	Name of appellant not mentioned in the contract.
02	Gujarat State Land Development Co. Ltd		Deepening/Creation of Village Pond, Kachchh.	
03	Gujarat State Land Development Co. Ltd		Deepening/Creation of Village Pond, Surendranagar	
04	Hara Structures		Deepening/Creation of Pond, Ahmedabad	



05	O/o Executive Engineer, Ahmedabad Irrigation Division, Ahmedabad	Deepening of Tank at Village Hathijan, Ahmedabad	Period of Contract is for 2014
06	Kadi Nagar Seva Sadan	Shehari Awasiyogna	Period of Contract is for 2012
07	Nadiad Irrigation Division	Deepening of Tokariyu Tank/Talavadi	
08	Nadiad Irrigation Division	Deepening of Narsingh Tank/Bhimkuyi Tank	
09	O/o Executive Engineer Salinity Control Division, Porbandar	Construction of percolation Tank in Sorthi, Porbandar	Period of Contract is for 2014
10	O/o Executive Engineer, Ahmedabad Irrigation Division, Ahmedabad	Deepening of Tank at Village Vastral, Ahmedabad	Period of Contract is for 2014
11	O/o Executive Engineer, Ahmedabad Irrigation Division, Ahmedabad	Deepening of Tank at Village Vatva, Ahmedabad	Period of Contract is for 2014
12	Agricultural Produce Market Committee Viramgam	Construction of Godown and Auction Shed	
13	Viramgam Nagar Palika	Road Construction under Swarnim Model Ghatak Yogana	
14	Viramgam Nagar Palika	Road and Gutter Construction	
15	Viramgam Nagar Palika	Construction of RCC Road	

5.4 In terms of Notification No.25/2012-ST dated 20.06.2012, services rendered to government, local authority or governmental authority is exempted, if they are classified under following sub-clauses. The appellant has claimed exemption under Clause 12(e) and 13(a) & 13(b) which are reproduced below;

**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;
- (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;
- (c) a building owned by an entity registered under section 12 AA of the Income tax Act, 1961(43 of 1961) and meant predominantly for religious use by general public;
- (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;

**5.5** The above entries of the notification were amended vide Notification No. 06/2015-ST dated 01.03.2015, wherein the entries at sub-clause (a), (c) and (f) of Clause 12 were omitted. However, vide Section 102 of the Finance Act, 2016, special provision was inserted, wherein retrospective exemption was provided to certain cases relating to construction of Government buildings. Section 102 is reproduced below;

**SECTION 102. Special provision for exemption in certain cases relating to construction of Government buildings.** — (1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable 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 establishment;
  - (ii) a clinical establishment; or
  - (iii) an art or cultural establishment;
- (c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act,

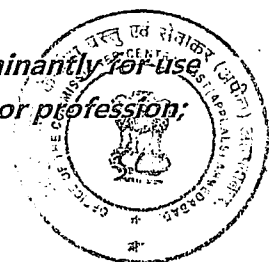
**under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.**

- (2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all the material times.
- (3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.

**5.6** Thereafter, vide Notification No.09/2016-ST dated 01.3.2016, after entry 12, with effect from the 1st March, 2016, the following entry shall be inserted, namely –

**"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 meant predominantly 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;”;***

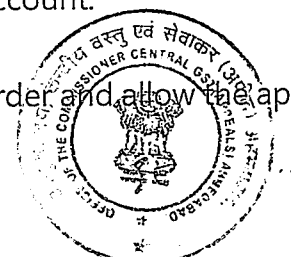
**5.7** From the work contracts submitted by the appellant, it is noticed that all the above work were carried out for Government department. Some of the activities are covered under clause 12(a), 12(d) and 12(e) and some are covered under clause 13(a). However, considering the period of dispute involved, I find that the appellant shall be eligible for exemption in terms of Entry No.12A of Notification No.09/2016-ST dated 01.3.2016, subject to the condition that the contracts have been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date. I find that this condition is a pre-requisite without which said exemption shall not be applicable.

**5.8** From the contracts, it is observed that some of the contracts were entered after 1st March, 2015 and therefore on such contracts the appellant shall not be eligible for exemption. Further, it is also observed that in some contracts, the period of contract is not pertaining to the period of dispute, therefore such contracts cannot be considered while granting exemption.

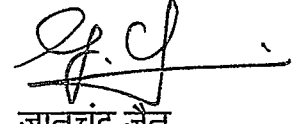
**5.9** It is also observed that in Form-26AS for the F.Y. 2015-16 and F.Y. 2016-17, the appellant has shown income of Rs.7,11,74,114 & Rs.6,47,43,159/- respectively. Whereas in P&L account they have shown the income of Rs.7,35,97,196/- and Rs. 6,57,85,496/- for the F.Y. 2015-16 & F.Y. 2016-17 respectively. Thus, I find that there is variation in the incomes reflected in P&L, Form-26AS and ST-3 Return, which requires a reconciliation. However, the appellant has failed to provide any reconciliation statement mentioning the details of the income received from various work contracts vis-à-vis the nature of work carried out under various contracts also that the condition prescribed in Notification No.09/2016 has been fulfilled. They also failed to provide proper justification of the variation in income detailed above.

**6.** I, therefore, find that in the interest of natural justice, the matter needs to be remanded back to the adjudicating authority to re-examine the claim made by the appellant and verify the nature of contracts and whether the conditions prescribed in the notification are fulfilled. The adjudicating authority shall grant a reasonable opportunity of personal hearing to the appellant and pass a fresh order in the matter. The appellant is also directed to appear before the adjudicating authority and produce all relevant documents to prove the fulfilment of the condition prescribed in the aforesaid notification and reconciliation statement of income reflected in the P&L account.

**7.** In light of above discussion, I set-aside the impugned order and allow the appeal filed by the appellant by way of remand.




8. 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.

  
ज्ञानचंद जैन

आयुक्त (अपील्स)

Dated: 15.03.2024

सत्यापित/Attested :

  
अधीक्षक (अपील्स),  
सी जी एस टी, अहमदाबाद



**By REGD/SPEED POST A/D**

To,  
M/s. Yogesh Jashubhai Patel,  
419-Fortune Business Hub,  
Science City Road, Sola Road, Sola,  
Ahmedabad -380060

- **Appellant**

The Joint Commissioner,  
Central GST,  
Ahmedabad North

- **Respondent**

**Copy to:**

1. The Principal Chief Commissioner, CGST and Central Excise, Ahmedabad.
2. The Commissioner, CGST and Central Excise, Ahmedabad North.
3. The Deputy Commissioner, CGST & CEX, Division -VI, Ahmedabad North.
4. The Superintendent (Systems), CGST, Appeals, Ahmedabad, for publication of OIA on website.
- ✓ 5. Guard file.

