



आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
 केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
 जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
 07926305065- टेलीफैक्स 07926305136



DIN: 20230864SW0000020857

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1532/2023-APPEAL | 5111 - 16
- ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-EXCUS-002-APP-88/2023-24**
 दिनांक Date : **28-08-2023** जारी करने की तारीख Date of Issue 01.09.2023
 आयुक्त (अपील) द्वारा पारित
 Passed by **Shri Shiv Pratap Singh**, Commissioner (Appeals)
- ग Arising out of Order-in-Original No. **85/ADC/MR/2022-23** दिनांक: **26.12.2022** , issued by
 The Additional Commissioner, CGST & Central Excise, Ahmedabad North
- घ अपीलकर्ता का नाम एवं पता Name & Address

1. Appellant
Naresh J. Rajgor, Prop. of Saraswati Construction Co., Flat No. 2/3, Jay Jaldhara Apartment, Mahavir Nagar, India Colony Road, Opp. Ramji Mandir, Mangal Tirth Hospital, Bapunagar, Ahmedabad - 380024
2. Respondent
The Additional Commissioner, CGST & Central Excise, Ahmedabad North, Custom House, 1st Floor, Navrangpura, Ahmedabad-380009

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, 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 प्रक्रिया 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 हों।

(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 ईए-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.

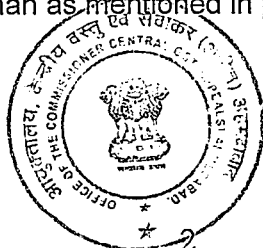
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 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 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 पढ़ी 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 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।

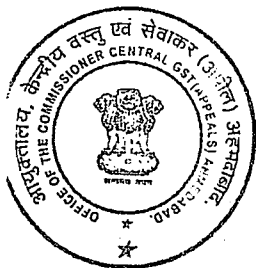
Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

- (7) 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 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. Saraswati Construction Co., Flat No.2/3 Jay Jaldhara Apartment, Mahavir Nagar, India Colony Road, Bapunagar, Near Mangal Tirth Hospital, Ahmedabad-380024 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No. 85/ADC/MR/2022-23 dated 27.12.2022, (in short '*impugned order*') passed by the Additional Commissioner, Central GST, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant were engaged in providing taxable services but were not registered with the Service Tax Department.

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 to 2016-17, it was noticed that the appellant has declared service related taxable value in their ITR/Form-26 AS on which no service tax was discharged. Letters were, therefore, issued to the appellant to explain the reasons for non-payment of tax and to provide certified documentary evidences for the said period. The appellant neither provided any documents nor submitted any reply justifying the non-payment of service tax on such receipts. The detail of the income is as under;

Table-A

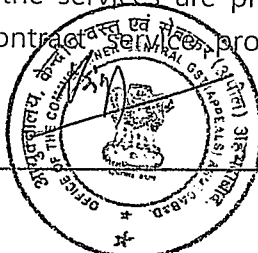
<i>F.Y.</i>	<i>Value as per P&L/ ITR</i>	<i>Service Tax liability</i>
2015-16	3,80,81,229/-	55,21,778/-
2016-17	4,13,06,455/-	61,95,968/-
	Total	1,17,17,746/-

2.1 A Show Cause Notice (SCN) No.STC/15-151/OA/2021-22 dated 23.04.2021 was, therefore, issued to the appellant proposing recovery of service tax amount of Rs.1,17,17,746/- along with interest under Section 73(1) and Section 75 of the Finance Act, 1994, respectively. Imposition of penalties under Section 77(1) and Section 78 of the Finance Act, 1994 were also proposed.

2.2 The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs. 1,17,17,746/- was confirmed alongwith interest. Penalty of Rs.10,000/- under Section 77(1) and penalty of Rs. 1,17,17,746/- was also imposed under Section 78 of the F.A., 1994.

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

- The appellant is engaged in the providing work contract services to Local Authority and Government. They provided services to Municipal Corporation of Greater Mumbai (MCGM) during the Financial Year 2015-16 and Financial Year 2016-17. The ex-parte order passed by the adjudicating authority is against facts.
- As per service Tax Notification No. 25/2012, dated 20/06/2012, vide clause No. 12 and 12A and 13, exempt taxable services from whole of the service tax leviable thereon under section 66B of the said act, if the services are provided to the Government, a local authority. The works contract services provided by the



appellant is exempted vide above notification and hence have not paid service tax to the department. The adjudicating authority has erred in imposing tax of Rs.1,17,17,746/- for the F.Y. 2015-16 and F.Y. 2016-17 by completely misconstruing the facts of the appellant.

- The invocation of extended period of limitation under proviso to Section 73(1) of the Finance Act is wholly without jurisdiction, arbitrary and illegal as the appellant is not liable to pay tax under the Finance Act, 1994 for the services provided is covered under mega exemption through the Notification No. 25/2012 dated 20/06/2012 and hence exempted from the service tax.
- Penalty of Rs.10,000/- under Section 77(1)(a) and Penalty of Rs.1,17,17,746/- under section 78 of the Finance Act is bad and illegal.

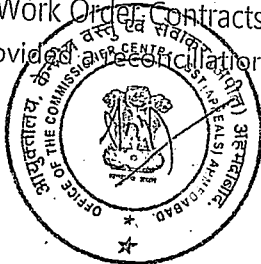
4. Personal hearing in the matter was held on 28.07.2023. Shri Vipul Goswami, Chartered Accountant, appeared for personal hearing and reiterated the submissions made in the appeal. He submitted that they provided services to the Municipal Corporation of Greater Mumbai. The services are exempted from service tax under the mega exemption notification. He handed over a box file containing copies of work orders and other financial statements. The adjudicating authority has passed the impugned order on ex-parte basis, merely on the basis of IT data without verification regarding the nature of service. He therefore, requested to set-aside the impugned order and allowed the appeal.

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 additional submissions made during personal hearing. The issue to be decided in the present case is as to whether the service tax demand of Rs.1,17,17,746/- confirmed alongwith interest and penalties in the impugned order passed by the adjudicating authority, in the facts and circumstances of the case, is legal and proper or otherwise?

The demand pertains to the period F.Y. 2015-16 to F.Y.2016-17.

5.1 It is observed that the entire demand has been raised in the SCN based on the income data shared by the CBDT, on which no service tax was paid by the appellant. The matter was decided ex-parte as the appellant did not file any defence reply. They neither availed any of the personal hearing opportunities granted by the adjudicating authority nor did they submit documentary evidence like works contracts, reconciliation statements etc. The adjudicating authority therefore decided the matter ex-parte considering the evidences available on record.

5.2 However, the appellant before the appellant authority have submitted the details of Works Contract receipts, sub-contractors agreements, P&L account, Balance Sheet, Form-26AS, Work Order Contracts, Payment Certificate and Work Completion certificate. They also provided a reconciliation statement which is reproduced below:-



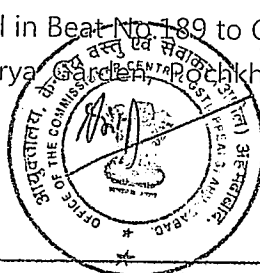
<i>Contract receipts as ITR exempted vide Notification No.25/2012-ST</i>						
2015-16	MCGM	Dev Engineers	S.P.Engineering	Jigneshwar Enterprises	Miscellaneous	Total
	3,65,37,289	9,43,940	5,00,000	6,00,000	36,000	3,86,17,229
2016-17	MCGM	S.P.Engineering	RNP Developers	Thirtharaj Construction	Piyush Enterprises	Total
	2,18,34,023	15,71,240	39,57,351	3,20,000	1,55,15,076	4,31,97,690

5.3 On scrutiny of the Work Contracts submitted, it is observed that the appellant was entrusted different work contracts by Municipal Corporation of Greater Mumbai (hereinafter referred to as 'MCGM' in short). Some of the details of the contracts are listed below;

- Repairs and covering of SWD at Building no.7 at old MHB Colony Borivalli (W);
- Improvement of passage and drainage system and repairing of A.P. Block at Babamiya Chawl, Jarimari, Kurla;
- Improvement of passage and drainage system at Muslim Society, Hanumant Compound, Jarimari, Kurla (W);
- Improvement of passage and drainage system at Babulal Chawl, Indira Valley, A.K.Road, Kurla (W);
- Providing fixing Lequer payer blocks on footpaths from Building no.21 to Post Office, Old MHB, Colony Borivali (W);
- Providing and Laying Sewer Line at Navpada, Kurla (W);
- Providing and fixing G.I. Door and RCC Cover at various places at Chandiwali and Yadav Nagar in L Ward in Kurla(W);

5.4 Further, in some case MCGM had entrusted the contracts to various other contractors like M/s. Tirthraj Construction, M/s. RNP Developers, M/s. Piyush Enterprises, M/s. S.P.Engineers, M/s. Jigneshwar Enterprises and M/s. Dev Engineers. All these works were subsequently sub-contracted to the appellant for which the appellant had raised invoices to the main-contractor for the work done. Copy of such invoices has also been submitted by the appellant.

- **M/s. Tirthraj Construction** was entrusted the work of improvement of passage and drainage system behind Dhanlakshmi Store at Turde Wadi Chawl.
- **M/s. RNP Developers** were entrusted various work contracts some of them were of P/F fencing at Jal Jawan Garden, Kalemarg, Bailbazar in Beat No.157, Kurla L Ward; Works Contract for Minor Repairs to PSC Blocks a Krantinagar; Works contract for Desilting of Chatrapati Shivaji Maharaj Talao; Works Contract Construction of steps at Goan Talav Gorai Goan Adivasipada Borivali.
- **M/s. Piyush Enterprises** was entrusted the contract for attending unforeseen work viz collapsed nalla walls, repairs to nalla walls etc in E.S. (Zone.V) by Deputy Chief Engineer, (Storm Water drains) Eastern Suburbs, Ghatkopar (East), Mumbai.
- **M/s. S.P.Engineers** was entrusted the work of Improvement of Footpath Near Shankracharya Garden, Pochkhannwala Road in Beat No.189 to G South Ward and Improvement of footpath near Shankracharya Garden, Pochkhannwala Road in Beat No.189 in g South.



- M/s. Jigneshwar Enterprises was entrusted the work of Improvement of Footpath Near Kalsekar chawl to Worli naka at Ganpathrao Kadam Marg in G South Ward
- M/s. Dev Engineers was entrusted the work of structural repair, rehabilitation and up-gradation of existing Khernagar Municipal School at Bandra in H/E Ward.

5.5 The appellant have claimed that all the above works contract falls under Serial No.12, 12A and 13 of Notification No.25/2012-ST dated 20.06.2012, hence exempted. To examine the issue relevant text of the said notification is reproduced below:-

Notification No.25/2012-ST dated 20.06.2012

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 65B of the said Act;

5.5.1 In the above entry, items (a), (c) and (f) was omitted vide [Notification No. 6/2015-S.T., dated 1-3-2015]. 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;

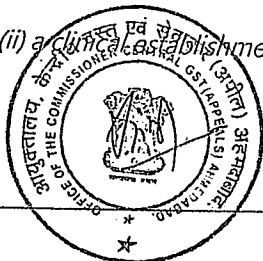
SECTION 102. Special provision for exemption in certain cases relating to construction of Government buildings. — (1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day 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.

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

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

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

Entry No. 13 of Notification No.25/2012-ST

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;

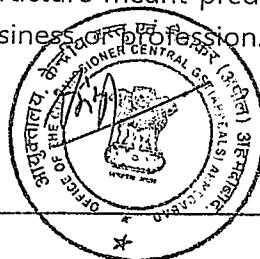
(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;

(c) a building owned by an entity registered under section 12AA 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

5.6 From the nature of work carried out by the appellant for MCGM, I find that the appellant were mainly entrusted the contract of construction, completion, repair, maintenance, renovation, or alteration of a civil structure meant predominantly for use other than for commerce, industry, or any other business or profession. At time they also



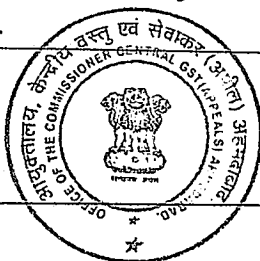
carried out the construction, repair, maintenance, renovation, or alteration of pipeline for sewerage treatment or disposal.

5.7 In terms of **serial no.12 clause (a)** of the Notification No.25/2012-ST dated 20.06.2012, the 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 civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession are exempted. The MCGM is a governmental/local authority. The terms "governmental authority" is defined at para-2 clause (s) of the mega notification, which means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution. Municipal Corporation of Greater Mumbai (MCGM) is a local body, governed by the State Government of Maharashtra and are responsible for basic civic infrastructure and enforcing duty. Therefore, the works contract service provided by the appellant by way of construction, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession are exempted.

5.8 Similarly, in terms of **serial no.12 clause (e)** of the Notification No.25/2012-ST, 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 pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal are exempted. The appellant were also entrusted the work of 'Improvement of passage and drainage system at Muslim Society, Hanumant Compound, Jarimari, Kurla (W)'; 'Improvement of passage and drainage system at Babulal Chawl, Indira Valley, A.K.Road, Kurla (W)'; 'Providing and Laying Sewer Line at Navpada, Kurla (W)', which I find are squarely covered under the clause (e), hence exempted.

6. Similarly, the sub-contract work carried out by the appellant for some of the main contractors like M/s. Tirthraj Construction, M/s. RNP Developers and M/s. Piyush Enterprises was for improvement of passage and drainage system behind Dhanlakshmi Store at Turde Wadi Chawl, P/F fencing at Jal Jawan Garden, Kalemarg, Bailbazar in Beat No.157, Kurla L Ward; Works Contract for Minor Repairs to PSC Blocks a Krantinagar; Works contract for Desilting of Chatrapati Shivaji Maharaj Talao; Works Contract Construction of steps at Goan Talav Gorai Goan Adivasipada Borivali, contract for attending unforeseen work viz collapsed nalla walls, repairs to nalla walls etc. in E.S. (Zone.V) by Deputy Chief Engineer, (Storm Water drains) Eastern Suburbs, Ghatkopar (East), Mumbai. As regards, the sub-contract work carried out by the appellant for M/s. S.P. Engineers, M/s. Jigneshwar Enterprises & M/s. Dev Engineers, it is noticed that the same was for improvement of Footpaths and structural repair, rehabilitation and up-gradation of existing Khernagar Municipal School at Bandra in H/E Ward.

6.1 The appellant have submitted the Work Orders, wherein MCGM has entrusted the work to these main contractor which was subsequently sub-contracted to the appellant. I



find that the renovation of footpath and renovation of municipal school are covered under **Sr. No. 12 clause (a), (d) & (e)** of Notification No.25/2012-ST of the notification respectively, hence exempted. Though the contract was entrusted by MCGM to other main contractors but these works were subsequently sub-contracted to the appellant. The appellant has rendered the service to these main contractors and therefore in terms of Sr.No.29 (h) of Notification No.25/2012-ST, the services provided by sub-contractor by way of works contract to another contractor providing works contract services which are exempt shall also be exempted. Since the services of main contractors are exempted, I find that the services rendered by the appellant shall also be exempted. Hence, they are not liable to pay tax on such services.

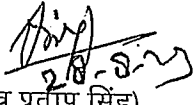
6.2 Considering the period of dispute (F.Y. 2015-16 and 2016-17), I find that the appellant shall be eligible for the exemption in respect of the services rendered to MCGM as these services are classifiable at clause (a) & (e) of Notification No.25/2012-ST, Section 102 of the Finance Act, 2016 and Notification No. 9/2016-ST dated 01.3.2016 (re-introducing the omitted clause (a), (c) & (f) of mega notification w.e.f 01.04.2016). Further the services rendered as sub-contractor to the main contractors are covered under clause (a), (d) & (e) of the aforesaid notifications.

7. Further, it is noticed that the appellant has also shown the Miscellaneous income of Rs.36,000/- for which they have not provided any justification. However, considering that the value is below threshold limit, I find that the appellant is not liable to pay tax in terms of Notification 33/2012-ST dated 20.06.2012, as their aggregate taxable value is below Rs. 10 lacs.

8. Accordingly, I find that the service tax demand of Rs.1,17,17,746/- is not sustainable in law. When the demand does not sustain there is no question of recovering the interest and imposing penalties thereon.

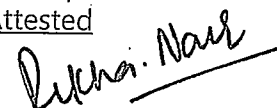
9. In light of above discussion, I set-aside the impugned order and allow the appeal filed by the appellant.

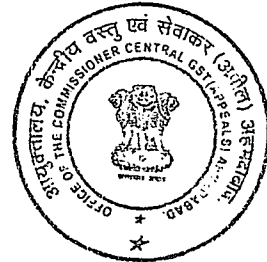
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed off in above terms.


(शिव प्रताप सिंह)
आयुक्त (अपील्स)

Date: 08.2023

Attested


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



By RPAD/SPEED POST

To,
M/s. Saraswati Construction Co.,
Flat No.2/3 Jay Jaldhara Apartment,
Mahavir Nagar, India Colony Road,
Bapunagar, Near Mangal Tirth Hospital,
Ahmedabad-380024

Appellant

The Additional Commissioner
CGST, Ahmedabad North

Respondent

Copy to:

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner, CGST, Division-I, Ahmedabad North
4. The Assistant Commissioner (H.Q. System), CGST, Ahmedabad North.
(For uploading the OIA)
5. Guard File.



