



सत्यमेव जयते

आयुक्त का कार्यालय

Office of the Commissioner

केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय

Central GST, Appeals Ahmedabad Commissionerate  
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**By SPEED POST**

DIN:- 20240464SW000021742A

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/4962/2023 4107 - 4118
(ख)	अपील आदेश संख्या और दिनांक / Order-In -Appeal and date	AHM-EXCUS-002-APP-02/2024-25 dated 05.04.2024
(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	09.04.2024
(ङ)	Arising out of Order-In-Original No. 69/AC/Demand/23-24 dated 26.5.2023 passed by The Assistant Commissioner, CGST Division-I, Ahmedabad North	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	Dipakkumar Kantilal Shah C/27, Mann Sarovar Apartment Bh. Galaxy Cinema, Naroda Ahmedabad - 382330

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 या 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 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 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) 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. Dipakkumar Kantilal Shah, C/27, Maan Sarovar Apartment, B/h-Galaxy Cinema, Naroda, Ahmedabad -382330 (hereinafter referred to as '*the appellant*') have filed the present appeal against the Order-in-Original No.69/AC/Demand/2023-24 dated 26.05.2023 (referred in short as '*impugned order*') passed by the Assistant Commissioner, Central GST, Division-I, Ahmedabad North (hereinafter referred to as '*the adjudicating authority*'). The appellant is having Service Tax Registration No. AFLPS9391CSD001.

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. 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. Letters were issued seeking clarification and to produce evidences for the same. However, the appellant did not respond, therefore, the service tax liability of Rs.10,88,729/- was quantified considering the differential income of Rs.72,58,195/- as taxable income.

**Table-A**

F.Y.	Value Difference in ITR & STR	S.Tax	Service tax payable
2016-17	72,58,195/-	15%	10,88,729/-

2.1 A Show Cause Notice (SCN) No. AR-II/Dipakshah/ST/Reg/2016-17 dated 12.10.2021 was issued to the appellant proposing recovery of service tax amount of Rs.10,88,729/- not paid on the differential income received during the F.Y. 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.

3. The said SCN was adjudicated vide the impugned order, wherein the service tax demand of Rs. 4,31,755/- was confirmed alongwith interest. Penalty of Rs. 10,000/- each was imposed under Section 70, Section 77(1)(a)& 77(1)(c). Penalty of Rs.10,88,729/- was also imposed under Section 78. However, the demand of Rs.6,56,974/- was dropped alongwith penalty under Section 77(2).

4. 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 is engaged in providing works contract services of construction of buildings for the different State Government authorities/boards/ corporations. Out of taxable services amounting to Rs. 1,15,85,192/-, Rs.86,14,649/- were taxable on which Service Tax was discharged. The remaining services amounting to Rs. 23,38,986/- were exempted under Notification No. 25/2012-ST. The Appellant submitted the details of the VAT Form 202 filed for an amount of Rs. 25,53,011/-. It also submitted the details of the work done for the Police Staff Quarters, Gujarat Police State Police Housing Corporation, Sports Authority of Gujarat, and Gujarat State Road Transport Corporation. Appellant got the Flooring



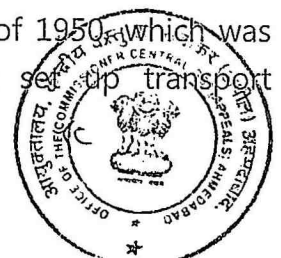
work in the parking area of a Bus Depot at Borsad at Nadiad Division by the Gujarat State Road Transport Corporation. Under this work, the Appellant has to execute the flooring of the Bus Depot. A copy of the letter work order dated 25.06.2015 is annexed. The Appellant also got the work order for the construction of the Handball Ground at P.M.G. Thakar Adarsh School at Kadi by the Sports Authority of Gujarat under a circular dated 31.12.2014. The appellant has claimed that Entry no.12 of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012, exempts the above activity undertaken, Hence, no Service Tax was paid on the activities undertaken for the government authorities, i.e., Police Housing, Gujarat State Transport Corporation, and for the Sports Authority of Gujarat.

- The Service Tax demand cannot be raised only on the basis of any such assessment made by the Income Tax Authorities. Information or data or documents relied upon loses its evidentiary value in the absence of any independent inquiry, which was mandatorily required to have been conducted by concerned officers of the Central Excise Department before issuance of Show Cause Notice. Hence, shared data by the Income Tax department cannot be used against the Appellant without an independent inquiry/investigation carried out by the Revenue. Therefore, the demand for Service Tax confirmed with interest and penalty by adjudicating authority also deserves to be set aside on this ground.
- The Adjudicating Authority erred in denying the benefit of Notification No. 25/2012- ST on the ground that the GSRTC and the Sports Authority of Gujarat are not the Government Authority, without examining the definition of "Government Authority prescribed under the said notification. Clause 2 (s) of the said notification provides as under:

*" Government authority - 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."*

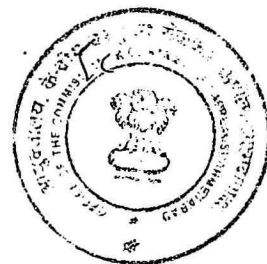
Therefore, whether GSRTC and Sports Authority of Gujarat are Government authorities or not is to be decided by the constitution of their formation, and the most important is whether both these bodies are established with 90% or more participation by way of equity or control by Government and set up by an Act of a State Legislature to carry out the function. The Adjudicating Authority nowhere examine this aspect and just gave its findings that both these bodies are not government authorities, without even discussing how these bodies are not satisfying the condition of Government Authorities.

- The Adjudicating Authority did not even examine or discuss that both these entities were formed by the State Government only, and both these entities are the creation of the State Government with 100% stake. The formation of the GSRTC was under the Road Transport Corporations Act, 64 of 1950, which was passed to enable State government who may desire to set up transport



corporations to provide an efficient and properly coordinated system of road transport services. Providing a service of transportation/facility at the bus terminus/airports to the citizen is the duty of the corporation/Municipalities and the State/Central Government. If the Adjudicating Authority could have examined Article 243 W read with Twelfth Schedule, he could not have passed such an order because clause 17 of the Twelfth Schedule provides "public amenities including street lighting, parking lots, bus stops and public conveniences." In view of this, it is very evident that providing services like constructing the bus stops or doing repairing work on the bus stops falls in "to carry out any function entrusted to a municipality under Article 243W of the Constitution"; hence, the findings of the Adjudicating Authority is contrary to the provision of law and not tenable.

- The Adjudicating Authority has erred in not considering the Twelfth Schedule Clause 12 and 13, which provides "promotion of cultural, educational and aesthetic aspects, provisions of urban amenities and facilities such as parks, gardens, playgrounds. When the Government, through their extended arm like the Sports Authority of Gujarat, developed play-grounds in government schools, which squarely covers under the Twelfth Schedule, and therefore, the findings of the Adjudicating Authority are without going into the provisions, but in a very casual manner.
- The Adjudicating Authority has seriously erred in confirming the demand on the ground that the work order allotted to the Appellant was of 25.06.2015 and therefore liable to pay the tax. However, there is no such condition or language in Explanation 1 to Clause (44) of Section 65B of the said Act. Hence, the impugned order suffers from a serious flaw and wrongly relies upon a provision not in the statute. Hence the impugned order deserves to be quashed and set aside in the interest of justice.
- The Adjudicating Authority has erred in confirming the demand of a larger period by invoking the proviso to Section 73 in the absence of mens rea and the evidence that there was any intention to evade tax by fraud, misstatements, suppression etc., In the present case, the period involved is 2016 to June 2017, whereas the show cause notice was issued on 12.10.2021; hence, it is clear that the entire period involved in the present case is time-barred. Extended period is even otherwise not sustainable, especially when all the details were in the public domain, all the financial data very much available in the balance sheet and the P & L account. Since the transactions were mentioned in the balance sheets and the Appellant also filed ST-3 returns on a regular basis, no suppression can be alleged against the Appellant, and therefore, there cannot be an intention to evade the duty. The extended period can be invoked only in the case where the appellant has suppressed the material facts with an intention to evade the duty. Both these ingredients of an extended period of limitation were missing in the facts of the present case, and therefore invocation of an extended period and confirming duty for the extended period is unjust, unfair, and perverse. They relied on various case laws to support the above argument.



- The adjudicating authority has failed to establish that how the Appellant was liable to pay any Service Tax. The Adjudicating Authority also failed in classifying the services under which demand has been raised and confirmed. The entire demand is unsustainable, and therefore, payment of interest is out of the question, and no demand of interest is justified.
- The Adjudicating Authority has erred in imposing a penalty of Rs.4,31,755/- under Section 78 (1) of the Finance Act, 1994 as amended, as the same has been imposed without any basis and grounds. The penalty under Section 78 can be levied only in the case of failure to pay service tax for reasons of fraud, etc., whereas, the facts of the present case and the grounds raised above, there is no evidence to prove that the Appellant can be charged with any of the limbs of the proviso to Section 73, and therefore, penalty under the said provision is unjustified, untenable and without any authority of law.
- The Adjudicating Authority has erred in confirming penalty under sub-section (1)(a) & (c) of Section 77 for having failed to take the registration, failed to keep, maintain or retain books of account and other documents as required in accordance with the provision of Act and Rules, but there is no finding that which documents are not maintained or which books of accounts are not maintained by the Appellant. There is no finding in the order for confirming the penalty under sub-section 1(a)&: (c) of Section 77, and therefore, penalty of Rs. 10,000/- is not justified. Therefore, the impugned Order needs to be set-aside.

5. Personal Hearing in the case was held on 19.03.2014. Shri Dhaval Shah, Advocate, appeared for personal hearing on behalf of the appellant. He stated that his client is providing works contract services to governmental authorities hence not liable to pay service tax as exempted vide Sr. No 12 of under Notification No. 25/2012-ST. Further, he also relied on six case laws submitted by them vide letter dated 18.03.2024.

6. I have carefully gone through the facts of the case available on record, grounds of appeal in the appeal memorandum, oral submissions made during personal hearing, the impugned order passed by the adjudicating authority and other case records. The issue before me for decision in the present appeal is whether the demand of service tax amounting to **Rs.4,31,755/-** confirmed alongwith interest, and penalties vide 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. 2016-17**.

6.1 The adjudicating authority confirmed the demand on the findings that;

- a) During the second quarter of F.Y, the appellant has declared taxable value of Rs.8,03,320/-after abatement, whereas the abated value should be Rs.8,36,814/- thus, there was short payment of service tax amounting to Rs.5,907/-.
- b) The appellant had rendered services amounting to Rs.2,85,016/- to M/s. GSRTC and services amounting to Rs. 1,40,832/- to M/s. Sports Authority of Gujarat which is not exempted in terms of Notification no.25/2012-ST. Hence the appellant was liable to pay service tax amounting to Rs.4,25,848/-.



**6.2** The appellant however has claimed that both M/s. GSRTC and M/s. Sports Authority of Gujarat are governmental authority as they are formed and controlled by the State Government. In terms of clause 17 of Twelfth Schedule of Article 243 W provides "public amenities including street lighting, parking lots, bus stops and public conveniences." Further, in Twelfth Schedule, Clause 12 and 13, provides "promotion of cultural, educational and aesthetic aspects, provisions of urban amenities and facilities such as parks, gardens. Playgrounds". The Sports Authority of Gujarat, developed playgrounds in government schools, which squarely covers under the Twelfth Schedule, and therefore, the services rendered to them are exempted.

**6.3** On going through the Work Contract, it is observed that the appellant has entered a contract with M/s. Sports Authority of Gujarat (SAG) for construction of volleyball ground at PMG Thakar Adarsh High School. I find that PMG Thakar Adarsh High School is a private school. However, the contract for construction of volleyball ground was granted by SAG. SAG implements government schemes related to sports. The SAG is a branch of Sports, Youth and Cultural Activities Department run by the Government of Gujarat. Their mission is to promote and develop sports activities in line with the sports policy of the state and the Government of India. The students, youth, men, women, senior citizens etc. are encouraged to participate in various sports by promoting sports in rural, taluka, district, municipal and metropolitan areas. Thus, I find that SAG is a governmental authority which undertook the construction of volleyball grounds in schools.

**6.4** Similarly, the appellant had provided services to M/s. GSRTC for repairing of Industrial Staff Quarter at Nadiad Division. I have gone through the Work Order No. STG/DE/NDD/W.O./2094 dated 25.06.2014 issued by the Deputy Engineer, S.T sub-Division, Nadiad and find that the contract was for repair of industrial staff quarters at Nadiad. I find that M/s. Gujarat State Road Transport Corporation (GSRTC) is a State Government Undertaking and was established as a passenger transport organisation providing bus services both within Gujarat and neighbouring states. Thus, I find that GSRTC is also a governmental authority as is run and administered by State government of Gujarat.

**6.5** The appellant has claimed that the above works contract falls under Serial No.12 of Notification No.25/2012-ST dated 20.06.2012. To examine their claim 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;***

**6.6** 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.*

**6.7** 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;"*

**6.8** Considering, the period involved, I find that Notification No.09/2016-ST dated 01.3.2016, would be applicable. In terms of Entry No.12A of Notification No.09/2016-ST dated 01.3.2016, services provided to 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; a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or 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 are exempted 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.

**6.9** The terms "governmental authority" is also defined at clause (s) of para-2 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. I find that construction of playground in school is a statutory function carried out by the State government. In terms of Article 243W of the Constitution, promotion of education is a statutory function and construction of playground in school is also part of such functions. I find such construction shall be covered under clause (b) of the notification. Further, I find that construction of residential quarter for personal use of employees is also covered in clause (c) above notification. Hence, I find that construction activity carried out by the appellant for M/s. SAG and M/s. GSRTC is covered under above notification.

**6.10** However, the appellant shall be eligible for above 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. From the contracts submitted by the appellant, it is observed that the contract entered with GSRTC was on 28.07.2016 i.e. after 1st March, 2015 hence on such contracts the appellant shall not be eligible for exemption. Hence, the appellant shall be liable to pay service tax on the



taxable value of Rs.19,00,106/-. Accordingly, I find that the service tax demand of **Rs.2,85,016/-** is sustainable on merits.

**6.11** However, the contract entered with SAG was on 31.12.2014 i.e. before 1st March, 2015, hence on such contract the appellant shall be eligible for the exemption. Accordingly, I find that the appellant shall not be liable to pay service tax on the taxable value of Rs.9,38,880/-. Hence, the service tax demand of **Rs.1,40,832/-** is not sustainable on merits

**6.12** Further, I find that in respect of short payment of Rs.5,907/-, the appellant has not given any grounds justifying the non-payment, hence, I concur with the findings of the adjudicating authority and uphold the service tax demand of **Rs.5,907/-**

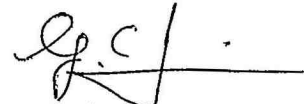
**6.13** Accordingly, I uphold the total service tax demand of **Rs. 2,90,923/-**. When the demand sustains there is no escape from the interest liability and the same is also recoverable.

**7.** The appellant has not declared the correct taxable value/income in the ST-3 return nor did they produce any evidence for such act. These acts thereby led to suppression of the value of taxable service and non-payment of service tax. All these acts undoubtedly bring out the willful mis-statement and fraud with intent to evade payment of service tax. Hence, I find that the extended period of limitation has been rightly invoked. If any of the circumstances referred to in Section 73(1) are established, the person liable to pay tax would also be liable to pay a penalty equal to the tax so determined above. Therefore, the appellant is also liable for equivalent penalty of Rs. 2,90,923/- under Section 78.

**8.** As regards, the penalty of Rs.10,000/- imposed under Section 77 (1) (a) is concerned; I find the same is imposable for not obtaining registration. I, however, find that the appellant was registered with the department and had paid service tax hence, such penalty is not imposable. Similarly, penalty under Section 77(1)(c) was imposed as the appellant had contravened the provision of Section 68. Hence was liable for penalty under Section 77(1)(c).

**9.** In view of the above discussion and findings, I partially uphold the service tax demand of Rs.2,90,923/- under proviso to Section 73(1) of the F.A., 1994; interest under Section 75 of the F.A., 1994; penalty under Section 77(1)(c) and penalty of Rs.2,90,923/- under Section 78 of the F.A., 1994.


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

  
(ज्ञानचंद जैन)

आयुक्त(अपील्स)

Date: 05/4/2024

Attested

  
अधीक्षक (अपील्स)

केंद्रीय जी. एस. टी, अहमदाबाद



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**Appellant**

The Deputy Commissioner  
CGST, Division-I,  
Ahmedabad North

-

**Respondent**

**Copy to:**

1. The Principal Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Commissioner, CGST, Ahmedabad North.
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