



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आज़ादी का
अमृत महोत्सव

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(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/2562/2022-APPEAL / १८०२३-१२
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-001-APP-150/2022-23 and 01.02.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	03.02.2023
(ङ)	Arising out of Order-In-Original No. 05/CGST/Ahmd-South/AC/PMC/2022-23 dated 26.04.2022 passed by the Assistant Commissioner, CGST, Division-V, Ahmedabad South Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Thummar Engineers, TF/15, Adheshwar Gold, Near Galaxy Business Mall, GIDC, Kathwadaz, Ahmedabad-382350

कोई व्यक्ति इस अपील-आदेश से असंतोश 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, 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 :-

(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 प्रकिया 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 सुताबिक 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 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

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 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 अपील 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।

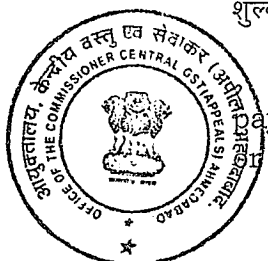
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

The present appeal has been filed by M/s. Thummar Engineers, TF/15, Adheshwar Gold, Near Galaxy Business Mall, GIDC, Kathwada, Ahmedabad – 382 350 (hereinafter referred to as the appellant) against Order in Original No. 05/CGST/Ahmd-South/AC/PMC/2022-23 dated 26.04.2022 [hereinafter referred to as “*impugned order*”] passed by the Assistant Commissioner, CGST, Division-V, Commissionerate : Ahmedabad South [hereinafter referred to as “*adjudicating authority*”].

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. ACCPT8126AST001 and engaged in providing services like Erection, Commissioning and Installation and Maintenance and Repair. The appellant was issued a Show Cause Notices bearing F.No. CEA-II/ST/15-24/C-VI/AP-29/FAR-78/R.P.-06/2016-17 dated 01.12.2016 and F.No. VI/1(b)-191/C-IAP-VII/(Now AP-02)/Audit/AHD/2017-18 dated 27.07.2018 for non-payment of service tax, during F.Y. 2011-12 to F.Y. 2014-15, and F.Y. 2016-17 respectively, under Erection and Commissioning Services. The appellant had, though considering the service provided by them as exempted, paid service tax along with interest and penalty at the insistence of the jurisdictional Central Excise and Service Tax Range Office. The details of the services provided by them during the period from April, 2017 to June, 2017 was called for from the appellant. As per the details submitted by the appellant, they had received an amount of Rs.3,00,77,336/- from Erection, Commissioning and Installation Services during the said period on which service tax amounting to Rs.45,11,600/- was payable. The appellant had paid service tax amounting to Rs.35,24,032/- on different dates during July to October, 2017.

2.1 On going through the invoices issued by the appellant during the said period, it appeared that they were providing only labour services, in the capacity of sub-contractor, to the main contractor and the appellant were not sub-contracted for works contract. It, therefore, appeared that the appellant were providing labour services relating to Erection, Commissioning and Installation services. Accordingly, it appeared that the appellant were not



eligible for exemption in terms of Serial No. 13 (a) and 14 (a) or 29 (h) of Notification No.25/2012-ST dated 20.06.2012.

3. The appellant was, therefore, issued a Show Cause Notice, under Section 73(1A) of the Finance Act, 1994, bearing No. V/3-23/Thummar/Dem/19-20 dated 11.02.2020 wherein it was proposed to :

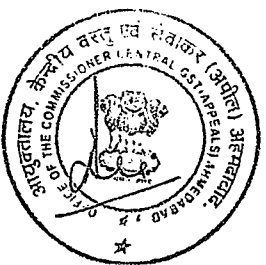
- a) Demand and recover service tax amounting to Rs.45,11,600/- under Section 73 (1A) of the Finance Act, 1994 and appropriate the service tax amounting to Rs.35,24,032/- paid by them..
- b) Recover Interest under Section 75 of the Finance Act, 1994.
- c) Impose penalty under Sections 76 and 77(2) of the Finance Act, 1994.

4. The SCN was adjudicated vide the impugned order wherein :

- A. The demand of service tax amounting to Rs.45,11,600/- was confirmed and the service tax amounting to Rs.35,24,032/- paid by them was appropriated.
- B. Interest was ordered to be recovered under Section 75 of the Finance Act, 1994.
- C. Penalty amounting to Rs.4,51,160/- was imposed under Section 76 of the Finance Act, 1994.
- D. Penalty amounting to Rs.20,000/- was imposed under Section 77 (2) of the Finance Act, 1994.

5. Being aggrieved with the impugned order, the appellant have filed the present appeal, along with condonation of delay, on the following grounds :

- i. The appeal was filed after a delay of 10 days as the pre-deposit was not made in time on account of they facing financial hardship.
- ii. The adjudicating authority has not appreciated the facts and circumstances of the case. They had availed exemption on the basis of labour service provided to infrastructure projects relating to construction of Airports, Metros, Bridges and Roads.
- iii. Prior to 01.07.2012, the definition of industrial construction given in Section 65 (25b) of the Finance Act, 1994 specifically excluded the service of construction provided in respect of roads, airports, railways, transport



- terminals, bridges, tunnels and dams. The service of construction of civil structure or part thereof provided by them was not liable to service tax.
- iv. Notification No.17/2005-ST dated 07.06.2005 granted exemption to site formation and clearance, excavation and earthmoving and demolition and such similar activities referred to in sub-clause (zzza) of clause (105) of Section 65 of the Finance Act, 1994, provided to any person by any other person in the course of construction of roads, airports, railways, transport terminals, bridges, tunnels, dams, ports or other ports from the whole of service tax. Further, Notification No.42/2010-ST dated 28.06.2010 also granted exemption to the service of commercial or industrial construction when wholly provided within an airport.
 - v. From 01.07.2012, Serial No.14(a) of Notification No.25/2012-ST dated 20.06.2012 provided exemption by way of construction pertaining to airport, railways or metro, while Serial No.13 (a) provided exemption to construction of road and bridges. Consequently, the service of fabrication/construction provided by them to the aforesaid contractors was exempt from service tax.
 - vi. They were also informed by the contractor that since the work was of fabrication /construction for airport, metro, bridge and road, the same was not liable to service tax. Accordingly, they had not paid service tax and have not recovered the same from their contractors. The other sub-contractors of the said contractors have also not been paying service tax in respect of similar work. Therefore, the exemption is not deniable.
 - vii. The SCN is issued on 11.02.2020 for the period of F.Y. 2015-16 to F.Y. 2016-17 which is issued beyond the normal period.
 - viii. Reliance is placed upon the judgment in the case of Hindustan Construction – 2021 (44) GSTL 95 and GMR Projects (P) Ltd – 2021 (44) GSTL 110. Reliance is also placed upon Board's clarification para 7.11.11 of the Education Guide.
 - ix. They rely upon Board's Circular No.138/7/2011-ST dated 06.05.2011 in which it was clarified that although a contractor may be rendering Works Contract service, the service provided by the sub-contractor is to be classified under the applicable head and not under Work Contract service:
 - x. The notice has not specified the particular clause of Section 65 of the Finance Act, 1994 under which the service rendered by them would fall.



The notice has proceeded on the basis that they were rendering service of Erection, Commissioning and Installation without examining whether the service rendered by them would fall under Section 65(39a) of the Finance Act, 1994.

- xi. They rely upon the judgment in the case of Mackintosh Burn Ltd. Vs. CST – 2016 (42) STR 161. They also rely upon the judgment in the case of Pioneer Fabrication P. Ltd. Vs. CCE – 2016 (42) STR 563.
- xii. The service rendered by them to the Contractors are by way of construction etc. and the same are in respect of airport, metro, roads and bridges and are, therefore, clearly exempt under Serial No.14(a) and 13(a) of Notification No.25/2012-ST dated 20.06.2012.
- xiii. The contention that the contractors have not sub-contracted the Works Contract Service to them and that the service rendered by them are only input service to the contractors is entirely irrelevant to the question of their eligibility to exemption under the said Notification. There is nothing in the Notification which restricts the scope of exemption only to Works Contract Service. Further, there is also nothing in Serial No. 13(a) and 14(a) of the said Notification to exclude their applicability when such service is provided by a sub-contractor.
- xiv. The notice is issued on 26.04.2020 demanding service tax for the period F.Y.2015-16 to F.Y.2016-17 which is beyond the normal period of limitation. The larger period of limitation is not applicable since there is no fraud or collusion or wilful mis-statement or suppression of facts or contravention with intent to evade tax.
- xv. It is evident from the work orders that the work executed was in respect of Road, Airports, Railways, Terminals. Despite this undisputed facts, the adjudicating authority has given findings that the said work pertains to only regular labour work and does not involve transfer of goods or property.
- xvi. The Board has vide Circular No.147/16/2011-Service Tax dated 21.10.2011 clarified that in respect of projects involving construction of Road, Airport, Port, Railway etc. service provided by the sub-contractor will get the benefit of exemption.
- xvii. It is their bona fide belief based on the clarification issued by the Board that they are eligible for exemption and as such no duty was assessed



and shown in their returns. The penalty of Rs.10,000/- imposed is liable to be set aside.

- xviii. The very fact that they had maintained complete records in respect of the service rendered by them rules out any fraud, collusion or wilful misstatement or suppression of facts of contravention with intent to evade tax. In the present case there is no positive and deliberate act of concealment of facts nor any clandestine activity. Therefore, the larger period of limitation cannot apply. They rely upon the decision in the case of CCE Vs. Chemphar Drugs and Liniment – 1989 (40) ELT 276 (SC) and Pushpam Pharmaceuticals Limited Vs. CCE – 1995 (78) ELT 401 (SC).
- xix. Since the demand of service tax is liable to fail both on merits and limitation, the question of interest or imposition of penalties does not arise.
- xx. Assuming but not admitting, if service tax is confirmed, cum duty price may kindly be given.

6. Personal Hearing in the case was held on 05.01.2023. Shri Naimesh K. Oza, Advocate, appeared on behalf of appellant for the hearing. He reiterated the submissions made in appeal memorandum and submitted copies of Invoice No. L/005 dated 17.04.2017 issued to L&T Ltd. and Work Order Amendment No. EC885WOD6000066/1 dated 07.04.2017.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the additional written submissions and the material available on records. The issue before me for decision is whether the labour service relating to Erection, Commissioning and Installation service provided by the appellant are exempted in terms of Serial No. 13 (a) and 14(a) of Notification No.25/2012-ST dated 20.06.2012 or otherwise?. The demand pertains to the period from April to June, 2017

8. Before going in to the merits of the appeal, the request of the appellant for condonation of delay in filing the appeal is taken up for decision. The appellant have stated that the delay was on account of financial hardship, which resulted in delayed payment of pre-deposit and consequent delay in filing of the appeal. It is observed that the delay in filing the appeal is of eight days after expiry of the prescribed period of two months in terms of Section 85



of the Finance Act, 1994. Appeals preferred before the Commissioner (Appeals) are governed by the provisions of Section 85 of the Finance Act, 1994. The relevant part of the said section is reproduced below :

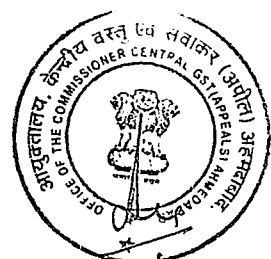
“(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 received the assent of the President, relating to service tax, interest or penalty under this Chapter:

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.”

8.1 Taking into account the fact that the delay is of only eight days and finding the reason for delay cited by the appellant to be sufficient cause, I am of the considered view that the request of the appellant for condonation merits favourable consideration and accordingly, the delay in filing appeal on part of the appellant is condoned.

9. Coming to the merits of the issue involved in the present appeal, it is observed that the impugned SCN has been issued to the appellant under Section 73 (1A) of the Finance Act, 1994 for the period from April to June, 2017. The appellant were earlier issued SCNs, involving the same issue, for the period from F.Y.2011-12 to F.Y. 2014-15 and F.Y. 2016-17. The SCN issued for the period from F.Y. 2011-12 to F.Y. 2014-15 was decided against the appellant by the adjudicating authority. On an appeal filed by the appellant, this authority had decided the matter vide OIA No. AHM-EXCUS-001-APP-069/2022-23 dated 31.10.2022. The relevant part of the said order is reproduced below :

“13. For the period post 01.07.2012, I find that the adjudicating authority has held at Para 26.6 of the impugned order that the appellant is supplying only labour work for erection, commissioning and installation to the main contractor where there is no supply or transfer of goods/property. The adjudicating authority thereafter held that the appellant could not prove that the service provided by them to the main contractors fell under the category of works contract service for original work as exempted under Serial No. 13 (a), 14(a) and 29(h) of Notification No.25/2012-ST dated 20.06.2012. As the adjudicating authority has himself held that the services provided by the appellant was erection, commissioning and installation service, he ought to have examined the eligibility of the appellant to exemption in terms of Serial No.13 (a) and 14(a) of the said Notification. On going through the material on record, I find that the appellant have at no stage claimed that the services provided by them were Works Contract Service nor did they claim the benefit of Sr.No.29 (h) of the said Notification Therefore, the findings of the



adjudicating authority regarding the eligibility of exemption under the said Serial No.29(h) is not relevant to the issue on hand.

13.1 I find that the appellant have claimed the benefit of exemption in terms of Serial No.13(a) and 14(a) of the said Notification, which are reproduced below :

“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:”

14. Services by way of construction, erection, commissioning, or installation of original works pertaining to,-

(a) an airport, port or railways, including monorail or metro;”

13.2 It is clear that Serial No.13 (a) and 14 (a) of the said Notification exempts the specified services, which includes construction, erection, commissioning, installation etc. pertaining to road, bridge, tunnel, terminal for road transportation, airport, port or railways including a metro. Even if the finding of the adjudicating authority that the services provided by the appellant were classifiable under erection, commissioning and installation service is accepted, then also the appellant are eligible for exemption under Serial No.13 (a) and 14 (a) of the said Notification. However, without giving any findings regarding the eligibility of exemption to the services provided by the appellant in terms of Serial No. 13(a) and 14(a) of the said Notification, the adjudicating authority has denied the benefit of exemption based on his findings that the service provided by the appellant was not Works Contract Services.

13.3 As stated earlier, it is not disputed by the department that the services provided by the appellant are pertaining to roads, bridges, airport, metro etc. Further, it has already been held in the preceding paragraphs that the services provided by the appellant are Construction services and the same are within the scope of Serial No. 13(a) and 14 (a) of the said Notification. Therefore, the services provided by the appellant are exempt from payment of service tax in terms of Serial No.13(a) and 14(a) of the said Notification. Consequently, the impugned order confirming demand of service tax for the period post 01.07.2012 also is not legally sustainable.

14. Considering the facts of the case, the Circulars issued by the Board as well as the judgments of the Hon'ble Tribunal supra, I am of the considered view that the impugned order confirming demand of service tax on the appellant is not legally sustainable. Accordingly, the impugned order is set aside and the appeal filed by the appellant is allowed with all consequential relief.”

9.1 The issue involved in the present appeal is the same as that in the OIA dated 31.10.2022 involving the same appellant. Further, there is no material on record indicating that the said OIA has been overruled and set aside by any higher appellate authority. Consequently, I do not find any reason to deviate from the view taken in the aforesaid OIA dated 31.10.2022. Accordingly, I am



of the considered view that the impugned order confirming demand of service tax against the appellant is not sustainable and is, hence, set aside.

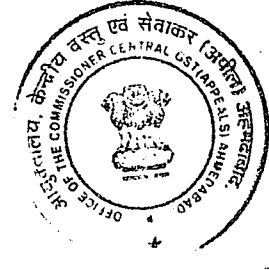
10. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

The appeal filed by the appellant stands disposed of in above terms.

Akhil Kumar
 (Akhilesh Kumar)
 Commissioner (Appeals)
 Date: 01.02.2023.

Attested:

[Signature]
 (N.Suryanarayanan. Iyer)
 Assistant Commissioner (In-situ)
 CGST Appeals, Ahmedabad.



BY RPAD / SPEED POST

To

M/s. Thummar Engineers,
 TF/15, Adheshwar Gold,
 Near Galaxy Business Mall,
 GIDC, Kathwada,
 Ahmedabad – 382 350

Appellant

The Assistant Commissioner,
 CGST, Division – V,
 Commissionerate : Ahmedabad South.

Respondent

Copy to:

1. The Chief Commissioner, Central GST, Ahmedabad Zone.
2. The Principal Commissioner, CGST, Ahmedabad South.
3. The Assistant Commissioner (HQ System), CGST, Ahmedabad South.
 (for uploading the OIA)
- ✓ 4. Guard File.
5. P.A. File.

