



**आयुक्त(अपील) का कार्यालय,
Office of the Commissioner (Appeal),**

केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
जीएसटी भवन, राजस्वमार्ग, अम्बावाड़ी अहमदाबाद ३८००१५.
CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
☎ 07926305065 - टेलीफैक्स 07926305136



DIN : 20221164SW000000B934

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STD/55/2022 / 55-8-82
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-085/2022-23
दिनांक Date : 30-11-2022 जारी करने की तारीख Date of Issue 30.11.2022
आयुक्त (अपील) द्वारा पारित
Passed by Shri Akhilesh Kumar, Commissioner (Appeals)
- ग Arising out of OIO No. WS07/O&A/OIO-64/AC-RAG/2021-22 दिनांक: 04.02.2022 passed by
Assistant Commissioner, CGST, Division-VII, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

- The Assistant Commissioner
CGST, Division VII, Ahmedabad South
3rd Floor, APM Mall, Nr. Seema Hall,
Anandnagar Road, Satellite, Ahmedabad-380015

Respondent

- M/s SPL and GDC Joint Venture
301-302, Prerna Arcade, Near Parimal Crossing,
Opposite Doctor House, Ellisbridge, Ahmedabad - 380006

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए संक्षम 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 :

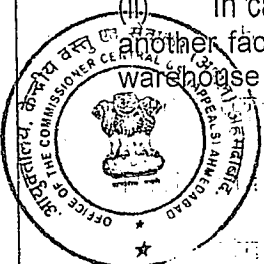
Revision application to Government of India:

(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 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।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.



(क) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(A) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(ख) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

(B) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(c) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के 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.

(2) 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 :-

(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 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 शुल्कअधिनियम 1970 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रु.6.50 पैसे कान्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

- (5) इन और संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

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

- 2^o सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण(सिस्टेट), के प्रतिअपीलो 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)-

- a. (Section) खंड 11D के तहत निर्धारित राशि;
इण लिया गलत सेनवैट क्रेडिट की राशि;
बण 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.

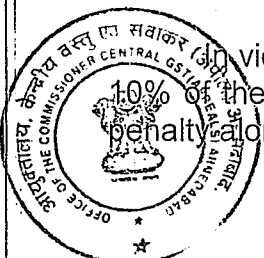
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (clxvi) amount determined under Section 11 D;
(clxvii) amount of erroneous Cenvat Credit taken;
(clxviii) 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।

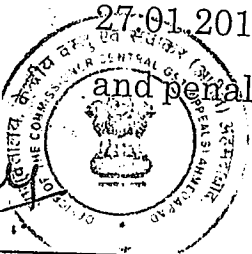
In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



ORDER-IN-APPEAL

The present appeal has been filed by the Assistant Commissioner, CGST, Division-VII, Commissionerate- Ahmedabad South (hereinafter referred to as the appellant), on the basis of Review Order No. 02/2022-23 dated 05.04.2022 passed by the Principal Commissioner, Central GST, Ahmedabad South Commissionerate in terms of Section 84 (1) of the Finance Act, 1994, against Order in Original No. WS07/O&A/OIO-64/AC-RAG/2021-22 dated 04.02.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division-VII, Commissionerate- Ahmedabad South [hereinafter referred to as "*adjudicating authority*"] in the case of M/s. SPL and GDC Joint Venture, 301-302, Prerna Arcade, Near Parimal Crossing, Opposite Doctor House, Ellisbridge, Ahmedabad - 380 006 [hereinafter referred to as the respondent].

2. Briefly stated, the facts of the case is that on the basis of CERA Audit Report dated 23.12.2014 received by the Preventive Section of the erstwhile Service Tax Commissionerate, Ahmedabad regarding identification of unregistered service provider, inquiry was initiated. The CERA audit had in their report observed that the respondent were engaged in providing Works Contract service. The respondent had entered into an agreement with Ahmedabad Municipal Corporation (hereinafter referred to as AMC) for the purpose of execution of construction of Multistory Parking at Kankaria, Ahmedabad vide Work Order dated 21.03.2011. The respondent had carried out the work of construction during the period from F.Y. 2011-12 to F.Y. 2015-16. The respondent was not registered with the Service Tax Department and they had not discharged service tax on the construction of the Multistory Parking at Kankaria, Ahmedabad. The respondent was issued Show Cause Notice bearing No. STC/04-116/O&A/15-16 dated 06.05.2016 demanding service tax amounting to Rs.1,05,01,874/-. The said SCN was adjudicated vide OIO No.AHM-SVTAX-000-JC-028-16-17 dated 27-01-2017 and the demand of service tax was confirmed along with interest and penalties were also imposed on the respondent. The respondent filed an

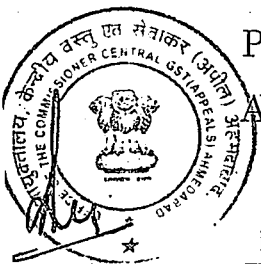


appeal before the Commissioner (Appeals), Ahmedabad against the said OIO. The Commissioner (Appeals), Ahmedabad vide OIA No. AHD-EXCUS-001-APP-181 to 183-2017-18 dated 22.11.2017 upheld the OIO and rejected the appeal of the respondent. Being aggrieved, the respondent filed an appeal, against the said OIA, before the Hon'ble CESTAT, Ahmedabad and the case is pending.

2.1 As the respondent was following similar practice during the subsequent period, they were issued periodical SCN bearing No. WS07/Range-II/SCN-15/O&A/SPL-GDC/2018-19 dated 11.01.2019 demanding service tax amounting to Rs.7,93,950/- for the period from April, 2016 to June, 2017 along with interest. Penalty was also proposed to be imposed under Sections 77(c) and 78 of the Finance Act, 1994. Late fee amounting to Rs.60,000/- was also proposed to be recovered. The SCN was adjudicated vide the impugned order and the proceedings were dropped.

3. Being aggrieved with the impugned order, the appellant department have filed the present appeal on the following grounds :

- i. The adjudicating authority has erred in dropping the demand for the period from April, 2016 to June, 2017 when the confirmation of demand for the period from F.Y. 2011-12 to F.Y. 2015-16 was upheld by the Commissioner (Appeals) vide OIA No. AHD-EXCUS-001-APP-181 to 183-2017-18 dated 22.11.2017. Therefore, following the principles of judicial discipline, the adjudicating authority should have decided the matter in favour of the revenue. The impugned order is passed in violation of principles of judicial discipline and is bad in law.
- ii. Reliance is placed upon the judgment in the case of UOI Vs. Kamlakshi Finance Corporation Ltd. – 1991 (55) ELT 433 (SC); Mangalnath Developers Vs. UOI – 2020 (374) ELT 175 (Bom.); Claris Lifescience Ltd. Vs. UOI – 2016 (336) ELT 612 (Guj.); Gemson Melt Pvt.Ltd. Vs. UOI – 2021 (377) ELT 49 (Gau.); 3F Industries Ltd. V. Asstt. Commr of Customs, Nagapattinam – 2020 (373) ELT 463



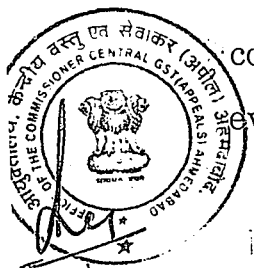
(Mad.); Imtiyaz Eqbal Pothiawala Vs. Commissioner of Customs, Mumbai – 2018 (361) ELT 890 (Tri.-Mumbai); Pankaj Guljarilal Gupta Vs. Collector of Custom, Calcutta – 1995 (75) ELT 47 (Cal.) and Central Coalfield Ltd. V. Commissioner of C.Ex., Jamshedpur – 2001 (137) ELT 752 (Tri.-Kolkata).

- iii. The adjudicating authority has erred in concluding only on the basis of letter dated 18.05.2016 of AMC that collection of parking charges are toward maintenance and administration of the structure and cannot be classified as commercial activity. The said letter is not supported by any document. Further, the parking facility is not free and charges are collected. AMC is providing parking facility for consideration which constitutes a commercial activity.
 - iv. Reliance is placed upon Circular No. 334/1/2010-TRU dated 26.02.2010 from which it is clear that commercial activity is interpreted as an activity done for consideration.
 - v. The Commissioner (Appeals) had also in OIA No. AHD-EXCUS-001-APP-181 to 183-2017-18 dated 22.11.2017 discussed letter dated 18.05.2016 of AMC and held that the letter alone is not sufficient to conclude that collection of parking charges is not a commercial activity.
 - vi. The adjudicating authority has relied upon the decision in the case of Dinesh Chandra Agarwal Infracon P. Ltd. Vs. CCE, Ahmedabad – 2011 (21) STR 41 (Tri.-Ahmd.). However, the Commissioner (Appeals) had vide the OIA dated 22.11.2017 supra, had held that the said decision is not applicable to the present case as the structure constructed are different and in the said case, no user charges were collected.
 - vii. The adjudicating authority has not given any finding on the proposal to charge late fee of Rs.60,000/-.
4. Personal Hearing in the case was held on 22.11.2022. Shri Sanket Gupta, Advocate, appeared on behalf of respondent for the hearing. He stated that the order was passed on merits after examining the relevant provisions.



5. The respondent has also filed their cross-objections on 24.11.2022 wherein it was, inter alia, contended that :

- The terms 'commercial or industrial construction' is defined under Section 65 (25)(b) of the Finance Act, 1994. Section 65(105)(zzq) of the Finance Act, 1994 defines the taxable service as any service provided or to be provided, to any person, by another person, in relation to commercial or industrial construction service.
- To qualify as commercial or industrial construction service for the purpose of service tax, the service should be rendered primarily for the purposes of commerce or industry. If the project is not primarily for the purposes of commerce or industry, then it would not be liable for service tax.
- Since the terms 'commerce' or 'commercial' are not defined under the Finance Act, 1994, they place reliance upon the meanings as per various dictionaries. From the dictionary meanings it is clear that the exploitation of an asset with commercial purpose necessarily requires an intention to make profit. This is also in line with the position explained in Circular dated 10.09.2004.
- AMC was established in 1950 under the Bombay Provincial Corporation Act, 1949 and is responsible for civic infrastructure and administration of the city of Ahmedabad.
- Reliance is placed upon Circular No. 80/10/2004-ST dated 17.09.2004 and 116/10/2009-ST dated 15.09.2009 issued by the CBIC.
- In terms of the Circular dated 15.09.2009 government projects cannot be said to be used primarily or wholly for furtherance of commerce or industry and, hence, such projects would not be liable to service tax.
- The present AMC contract being a government project to provide better parking facilities to the citizens of Ahmedabad, in terms of the above circular, would not be classifiable as project used primarily for furtherance of commerce or industry and, hence, would not be liable to service tax.
- AMC is allowing the use of the said parking to others for a consideration not with an intention to make profit and the same is evident from letter dated 16.05.2016 of AMC wherein it was clarified



that the parking charges was collected for maintenance of the parking facility.

- It is also submitted that profit motive is absent and therefore, the AMC is an organization i.e. non commercial in nature.
- It is well settled position of law that merely because some fee is charged for the service does not make any institution a commercial institution when there is no intention to make profit.
- Reliance is placed upon the judgment in the case of B.G. Shirke Construction Technology Pvt. Ltd. V. CCE, Pune – 2014 (33) STR 77 (Tri.-Mumbai); Secretary, Ministry of Broadcasting Vs. Cricket Association of Bengal – (1995) 2 SCC 161; Breach Candy Swimming Bath Trust – 27 ITR 279; CCE Vs. Employ Me – 2006 (4) STR 303; Kerala State Ex-Service League Vs. CCE, Trivandrum – 2006 (3) STR 400; Dr. Jivraj Mehta Smarak Health Foundation and Medical Centre Vs. CC, ACC, Mumbai & Ahmedabad – 2004 (176) ELT 638; Ratan Das Gupta & Co. Vs. CCE, Jaipur – 2017 0 GSTL 247 (Tri.-Del.); Nagarjuna Construction Co. Ltd. V. Commr. of C.Ex., Hyderabad – 2010 (19) STR 259 (Tri.-Bang.).
- The onus is on the department to prove that AMC is using the parking with an intention to make profit and the department has not discharged such burden. Therefore, the entire demand of service tax is unsustainable.
- Article 243W read with 12th Schedule to the Constitution entrusts responsibility to implement schemes related to public amenities with a Municipality or a Local Authority. Therefore, the parking facility constructed for AMC is for the purpose of public at large and not for any commercial purpose.
- Even if the civil structure is secondarily or incidentally used for commerce or industry, the service of construction of such civil structure would not be liable to service tax.
- The term 'primarily' has been defined in different dictionaries to mean 'chiefly or mainly, originally', 'in a primary manner, in the first place, in the first intention, originally'. In view of these, the term 'primarily' means mainly, predominantly.



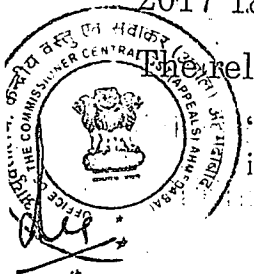
- The primary objective of AMC in constructing the parking facility is to avoid traffic congestion and providing parking facilities at nominal fees does not mean that the facilities are used for commercial purpose.
- Serial No.12 (a) of Notification No.25/2012-ST dated 20.06.2012 grants exemption in respect of services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning etc. of a civil structure or any other original work meant predominantly for use other than commerce, industry or any other business or profession. The construction involved is for non-commercial use and therefore, cannot be taxed under the category of Works Contract service (prior to 01.07.2012) nor after 01.07.2012 in view of the said Notification.
- The SCN is issued on 11.01.2019 for the period from April, 2016 to June, 2017. The demand for the normal period of limitation is time barred. The present SCN is a periodical SCN and it is a trite law that extended period shall not be invoked in periodical SCNs.
- Since service tax cannot be levied and the demand is unsustainable, the question of paying interest and penalty does not arise.

6. I have gone through the facts of the case, submissions made in the Appeal Memorandum, the cross-objections filed by the respondent and the material available on records. The issue before me for decision is whether the respondent are liable to pay service tax in respect of the Multistory Parking built by them for AMC.

7. It is observed that the appellant department has challenged the impugned order on the grounds that the same was passed in violation of the principles of judicial discipline inasmuch as the same matter involving the same respondent was decided against them and in favour of the Department vide OIO dated 27.01.2017, which was also upheld by the Commissioner (Appeals), Ahmedabad vide OIA No. AHD-EXCUS-001-APP-181 to 183-2017-18 dated 22.11.2017. I have perused the said OIA dated 22.11.2017.

The relevant portion of the said OIA is reproduced below :

"10.2; Appellant has not produced any evidence to establish that motive of AMC is not to "recover the cost" and not to "earn profit" out of user charges. Therefore,



I hold that said multistory parking is used for commercial purpose and consequently appellant is liable for payment of service tax for the period up-to 30.06.2012".

7.1 It was further held at Para 11 of the said OIA that :

"I have earlier held that the appellant has not proved that said multistory building is used for non-commercial purpose and has also not proved that AMC is not earning any profit out of user charges. Therefore, I hold that for period after 30.06.2012 also, appellant is not eligible for exemption under sr. No. 12(a) of Notification No. 25/2012-ST dated 20.06.2012 so far it relates execution of works contract in construction of Multistory Stadium at Kankariya."

8. It is an undisputed fact that the respondent have filed an appeal against the said OIA before the Hon'ble CESTAT, Ahmedabad and the same is pending. Accordingly, the order passed by the Commissioner (Appeals) vide the said OIA dated 22.11.2017 legally stands as the same has not been set aside by any higher appellate authority. Therefore, the adjudicating authority was, in terms of the principles of judicial discipline, bound to follow the order dated 22.11.2017 passed by the Commissioner (Appeals), Ahmedabad.

9. Since the facts of the present appeal are identical to that in the case, involving the same respondent, decided by the Commissioner (Appeals), Ahmedabad vide OIA dated 22.11.2017, I do not find any reason to take a different stand, particularly considering the fact that the said OIA has not been set aside by any higher appellate authority. It also needs mentioning that the appeal filed by the appellant department is on the sole ground of non-following of judicial discipline by the adjudicating authority. Therefore, I am restricting myself to deciding the present appeal on the ground raised by the appellant department.

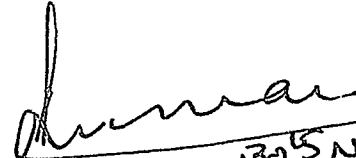
10. In view of the above facts, I am of the considered view that the respondent are liable to pay service tax amounting to Rs.7,93,950/- in respect of the Works Contract provided by them during the period from F.Y.2016-17 to F.Y. 2017-18 (up to June, 2017). Accordingly, the impugned order is set aside. I confirm the demand of service tax amounting to Rs.7,93,950/- under Section 73 of the Finance Act, 1994 against the respondent. The respondent are also liable to pay interest under Section 75




of the Finance Act, 1994. I impose a penalty amounting to Rs.75,000/- upon the respondent under Section 76 of the Finance Act, 1994. The respondent are also ordered to pay the late fee amounting to Rs.60,000/-, for delay in filing the ST-3 returns, in term of Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994.

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

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


(Akhilesh Kumar)
Commissioner (Appeals)
Date: 30.11.2022.

Attested:


(N.Suryanarayanan. Iyer)
Superintendent(Appeals),
CGST, Ahmedabad.

BY RPAD / SPEED POST

To

The Assistant Commissioner,
CGST, Division- VII,
Commissionerate : Ahmedabad South.

Appellant

M/s. SPL and GDC Joint Venture,
301-302, Prerna Arcade,
Near Parimal Crossing,
Opposite Doctor House,
Ellisbridge, Ahmedabad – 380 006

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.



