



सत्यमेव जयते

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 - टेलिफैक्स 07926305136



DIN: 20230964SW0000419244

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/4243/2023 / 5342 - 46
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-118/2023-24
दिनांक Date : 08-09-2023 जारी करने की तारीख Date of Issue 08.09.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of OIO No. 184/WSO8/AC/KSZ/2022-23 दिनांक: 01.02.2023 passed by Assistant
Commissioner, CGST, Division VIII, Ahmedabad South.
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. Aadhya Corporation Pvt. Ltd.,
D-5, Dayal Park Co. Op. Hou. Society,
Near Venugopal Tenement, Behind D-Mart,
132, Feet Ring Road, Jivraj Park, Vejalpur,
Ahmedabad-380051.

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 :

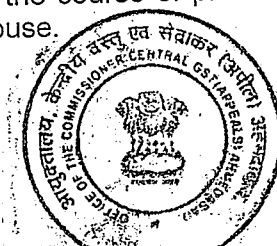
Revision application to Government of India:

(i) 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 इका 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.

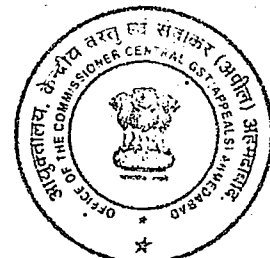
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 Appellate 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 यथासंशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश 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 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.

- 10 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.

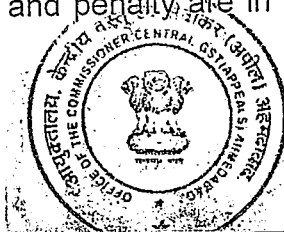
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

- (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

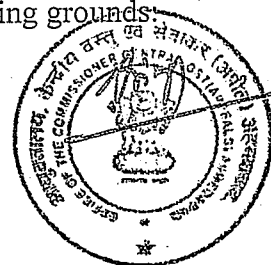
The present appeal has been filed by M/s. Aadhya Corporation Pvt. Ltd., D-5, Dayal Park Co. Op. Hou. Society, Near Venugopal Tenement, Behind D-Mart, 132 Feet Ring Road, Jivraj Park, Vejalpur, Ahmedabad - 380051 (hereinafter referred to as "the appellant") against Order-in-Original No. 184/WS08/AC/KSZ/2022-23 dated 01.02.2023 (hereinafter referred to as "the impugned order") passed by the Assistant Commissioner, Central GST, Division VIII, Ahmedabad South (hereinafter referred to as "the adjudicating authority").

2. Briefly stated, the facts of the case are that the appellant are holding PAN No. AAMCA3922A. On scrutiny of the data received from the Central Board of Direct Taxes (CBDT) for the FY 2015-16, it was noticed that the appellant had earned an income of Rs. 1,14,18,996/- during the FY 2015-16, which was reflected under the heads "Total Amount Paid / Credited under Section 194C, 194I, 194H, 194J" filed with the Income Tax department. Accordingly, it appeared that the appellant had earned the said substantial income by way of providing taxable services but had neither obtained Service Tax registration nor paid the applicable service tax thereon. The appellant were called upon to submit copies of required documents for assessment for the said period. However, the appellant had not responded to the letters issued by the department.

2.1 Subsequently, the appellant were issued Show Cause Notice No. F.No. CGST/WS0802/O&A/TDP(15-16)/AAMCA3922A/20-21 dated 22/12/2020 demanding Service Tax amounting to Rs. 16,55,754/- for the period FY 2015-16 under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994. The SCN also proposed recovery of interest under Section 75 of the Finance Act, 1994; and imposition of penalties under Section 77(1), Section 77(2) and Section 78 of the Finance Act, 1994.

2.2 The Show Cause Notice was adjudicated, ex-parte, vide the impugned order by the adjudicating authority wherein the demand of Service Tax amounting to Rs. 16,55,754/- was confirmed under proviso to Sub-Section (1) of Section 73 of the Finance Act, 1994 along with Interest under Section 75 of the Finance Act, 1994 for the period from FY 2015-16. Further (i) Penalty of Rs. 16,55,754/- was imposed on the appellant under Section 78 of the Finance Act, 1994; (ii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(1) of the Finance Act, 1994; and (iii) Penalty of Rs. 10,000/- was imposed on the appellant under Section 77(2) of the Finance Act, 1994.

3. Being aggrieved with the impugned order passed by the adjudicating authority, the appellant have preferred the present appeal, inter alia, on the following grounds:



- The appellant, were a private limited company and were in business of trading of goods i.e. Agri. Plants, Electrical Goods, etc. and also engaged in providing Erection and installation services for installation of Gasi-fire for the State Government during the FY 2015-16.
- Their income from trading and service during the FY 2015-16 is as under:

Particulars	FY 2015-16	Remarks
Service Income – Installation of BioGasifire	1,19,77,156/-	Exempted as per Sr. No. 12A of the Noti. No. 25/2012-ST
Sales income from sale of Agri. Plants	15,59,500/-	Sale of goods covered in negative list of service
Sales income from sale of goods	63,000/-	Sale of goods covered in negative list of service
Sales income from sale of Electric Goods to Anganwadi	27,43,440/-	Sale of goods covered in negative list of service
Total	1,63,43,096/-	

- The sale of goods / trading of goods falls in Negative List as per Section 66D(e) of the Finance Act, 1994. Hence, the appellant are not liable to pay service tax on the said amount of Rs. 15,59,500/-, Rs. 63,000/- and Rs. 27,43,440/-. The appellant already paid appropriate VAT on the said sale of goods. It is also to note that in the captioned show cause notice the service tax not demanded on the aforesaid sale income of the appellant.
- The appellant submitted that their income i.e. 1,19,77,156/- is from service and received from the Assistant Director of Animal Husbandary. However, the Assistant Director of Animal Husbandary deducted TDS under Section 194C on an amount of Rs. 1,14,18,996/- on the basis of which the captioned show cause notice issued to the appellant. The said income is received by the appellant by providing Erection, commissioning and Installation of the Bio Gasi Fire and Wormcast Production Project for the State Government (Animal Husbandary Department) on the basis of the Work Orders issued by the District Development Officer and thus, the service provided by them were exempted under Entry No. 12/12A of Mega Exemption Notification No. 25/2012-ST dated 20.06.2012 read with Section 102 of the Finance Act, 1994.
- As evidence, the appellant attached herewith following work order:



- (1) Work Order No. DP/NaPaNi/4/WorkOrder/Vashi/1113/2015 dated 31.01.2015 issued by the District Development Officer, Sabarkantha-Himatnagar issued to the appellant for the work of "Bio Gas Plant and Wormicaste Production project" for an amount of Rs. 49,60,075/-.
- (2) Work Order No. DP/NaPaNi/4/WorkOrder/Vashi/241 to 244/2015 dated 17.01.2015 issued by the District Development Officer, Sabarkantha-Himatnagar issued to the appellant for the work of "Biomass Gasi Fire" for an amount of Rs. 64.60 Lakhs.
- They have also submitted Copy of Annual Audit Report for the FY 2014-15, Copy of Income Tax Return for the FY 2014-15, Profit & Loss Account for the FY 2014-15, Form 26AS for the FY-2014-15.
 - They further submitted that the service provided by the appellant were exempted as per Notification No. 25/2012-ST. Hence question of violation of any of the provisions of Finance Act 1994 or rules made there under does not arise. No payment of service tax or interest or penalty is require to be paid by the appellant. It is requested to drop the proceeding and oblige.
 - The appellant have never suppressed anything from the department. All the activity carried out by the appellant is already recorded/declared in the statutory records maintained by them. Hence proviso to section 73 of Finance Act cannot be invoked for the demand of extended period.
 - The show cause notice and impugned order issued merely on the basis of amount reflected on 26AS/ITR, therefore, liable to be quashed. In this regard, they relied upon the following case laws:
 - a) M/s. Amrish Rameshchandra Shah Vs. Union of India and others (TS-77-HC-2021 Bom.-ST)
 - b) Sharma Fabricators & Erectors Pvt. Ltd. [2017 (5) GSTL 96 (Tri. - All.)]
 - c) Kush Constructions Vs. CGST NACIN [2019 (24) GSTL 606 (Tri. - All.)]
 - d) Alpa Management Consultants P. Ltd. Vs. CST [2007 (6) S.T.R. 181 (Tri.-Bang.)]
 - The department has simply collected the data from the income Tax department such as TDS 26 AS Return for the year 2015-16 and issued Show cause notice demanding the amount of Service Tax on the total income so received by the appellant which is time



barred under limitation act and provisions of Section 73(1) of Finance Act, 1994 are not applicable. The appellant relied on the following decisions pronounced by the Supreme Court of India and other apex court.

- (a) CCE Vs. Chemphar Drugs & Liniments - 1989 (40) ELT 276 (SC)
- (b) Uniworth Textiles Ltd. Vs. CCE - 2013 (288) ELT 161 (SC)
- (c) Pushpam Pharmaceuticals Company Vs. CCE - 1995 (78) ELT 401 (SC)

- As regard other allegation regarding suppression of facts and intension to evade payment of tax, the appellant have submitted that they have not suppressed anything from the department, recorded every details of the service provided in their statutory records and hence it cannot be said that the appellant have suppressed anything from the department with an intent to evade payment of tax, specifically when the appellant is not liable to any service tax as enumerated above.
- As the service provided by the appellant were exempted under Notification No. 25/2012-ST. Hence question of violation of any of the provisions of Finance Act 1994 or rules made there under does not arise. No payment of service tax or interest or penalty is require to be paid by the appellant. The appellant requested to drop the proceeding initiated against them.

4. Personal hearing in the case was held on 01.09.2023. Shri Hitesh Gadhavi, Director, appeared for personal hearing and reiterated submission made in the appeal. He submitted that the appellant provided service to the Government authorities that is to the Department of animal husbandary and to the Anganwadi (ICDS). He submitted that, Copies of work orders are enclosed with the appeal, requested to set aside the impugned order since, the service provided by the appellant was exempted from service tax.

5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum; during the course of personal hearing and documents available on record. The issue to be decided in the present appeal is whether the impugned order passed by the adjudicating authority, confirming the demand of service tax against the appellant along with interest and penalty, in the facts and circumstance of the case, is legal and proper or otherwise. The demand pertains to the period FY 2014-15.

6. I find that the main contention of the appellant are that (i) they were engaged in Erection, Commissioning and Installation Work for government authority as main contractor and their services are exempted from whole of the service tax under clause 12, 12A of



exemption Notification No. 25/2012-ST as amended read with Section 102 of the Finance Act, 1994, hence they are not liable to pay service tax on such services. It is also observed that, the adjudicating authority passed the impugned order ex-parte.

7. For ease of reference, I hereby produce the relevant abstract of the Notification No. 25/2012-ST dated 20.06.2012 as amended, and Section 102 of the Finance Act, 1944, which reads as under:

"Notification No. 25/2012-Service Tax dated 20th June, 2012

G.S.R. 467(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification No. 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

1...

2... ..

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; [***] omitted by Notification No. 6/2015-ST dated 1.3.2015 w.e.f.1.4.2015.*

(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; [***] omitted by Notification No. 6/2015-ST dated 1.3.2015 w.e.f.1.4.2015.*



(d) canal, dam or other irrigation works;

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act[***] omitted by Notification No. 6/2015-ST dated 1.3.2015 w.e.f.1.4.2015.

[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;] Inserted vide Notification No. 9/2016- ST dated, 1.3.2016 w.e.f.1.3.2016.”

“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;”

7.1 On verification of Work Order No. DP/NaPaNi/4/WorkOrder/Vashi/1113/2015 dated 31.01.2015 issued by the District Development Officer, Sabarkantha-Himatnagar issued to the appellant for the work of “Bio Gas Plant and Wormicaste Production project” for an amount of Rs. 49,60,075/- and Work Order No. DP/NaPaNi/4/WorkOrder/Vashi/241 to 244/2015 dated 17.01.2015 issued by the District Development Officer, Sabarkantha-Himatnagar issued to the appellant for the work of “Biomass Gasi Fire” for an amount of Rs. 64.60 Lakhs, I find that the appellant carried out work related to Erection, Commissioning and Installation of Bio-Gasi Fire and Wormicaste Production Project for the Government authority and the said work is exempted by virtue of Section 102 of the Finance Act, 1994 for the period from 01.04.2015 to 29.02.2016 and Sr. No. 12A(a) of the Notification No. 25/2012-ST dated 30.06.2012 as amended during the period of 01.03.2016 to 31.03.2017, and therefore, the appellant is not liable for Service Tax on the said work income of Rs. 1,63,43,096/- received during the FY 2015-16 and on the same TDS under Section 194C has been deducted and Service Tax demanded under the captioned show cause notice and confirmed by the adjudicating authority under the impugned order.

8. As regard the remaining income of Rs. 43,65,940/- (Rs. 15,59,500/-, Rs. 63,000/- and Rs. 27,43,440/-) for the FY 2015-16, on verification of the documents submitted by the appellant, i.e. Annual Audit Report, Profit & Loss Account for the FY 2015-16, I find that during the relevant period i.e. FY 2015-16, the appellant received the said income from trading activities, which falls in Negative List as per Section 66D(e) of the Finance Act, 1994. I also find that the appellant paid appropriate VAT on the said trading income. I also find that the service tax not demanded on the said income in the caption show cause notice and in the impugned order.

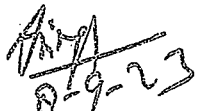
9. In view of the above discussion, I find that the appellant are not liable to Service Tax of Rs. Rs. 16,55,754/- on the income of 1,14,18,996/- received by them during the FY 2015-16 as confirmed in the impugned order. Since the demand of Service Tax is not sustainable on merits, there does not arise any question of charging interest or imposing penalties in the case.



10. In view of above, I hold that the impugned order passed by the adjudicating authority confirming demand of Service Tax, in respect of income received by the appellant during the FY 2015-16, is not legal and proper and deserve to be set aside. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.

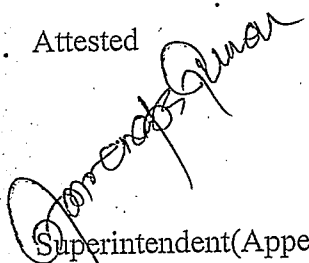
11. अपील कर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

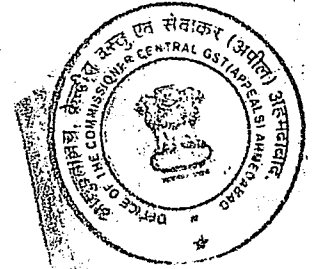
The appeal filed by the appellant stands disposed of in above terms.


(Shiv Pratap Singh)
Commissioner (Appeals)

Date : 08-09-23

Attested


Superintendent(Appeals),
CGST, Ahmedabad



By RPAD / SPEED POST

To,
M/s. Aadhya Corporation Pvt. Ltd.,
D-5, Dayal Park Co. Op. Hou. Society,
Near Venugopal Tenement, Behind D-Mart,
132 Feet Ring Road, Jivraj Park, Vejalpur,
Ahmedabad - 380051

Appellant

The Assistant Commissioner,
CGST, Division-VIII,
Ahmedabad South

Respondent

Copy to :

- 1) The Principal Chief Commissioner, Central GST, Ahmedabad Zone
- 2) The Commissioner, CGST, Ahmedabad South
- 3) The Assistant Commissioner, CGST, Division VIII, Ahmedabad South
- 4) The Assistant Commissioner (HQ System), CGST, Ahmedabad South
(for uploading the OIA)

- 5) Guard File
- 6) PA file

