



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: 20230864SW0000222FA9

स्पीड पोस्ट

- क फाइल संख्या : File No : GAPPL/COM/STP/1277/2023 / 11606 - 11011
1279
1280
- ख अपील आदेश संख्या Order-In-Appeal No. AHM-EXCUS-001-APP-79to81/2023-24
दिनांक Date : 31-07-2023 जारी करने की तारीख Date of Issue 18.08.2023
आयुक्त (अपील) द्वारा पारित
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals)
- ग Arising out of OIO No. 38-40/CGST/Ahmd-South/JC/SR/2022-23 दिनांक: 21.11.2022 passed by
Joint Commissioner, CGST, Ahmedabad South
- घ अपीलकर्ता का नाम एवं पता Name & Address

Appellant

M/s. Khurana Engineering Limited,
2nd Floor, MSK House,
Near Kashiram Rana Bhavan,
Passport Office Road,
Ambawadi, Ahmedabad-380015

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

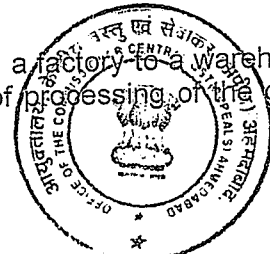
Revision application to Government of India:

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी 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 अनुसूचि-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 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.

1⁰⁰ 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.

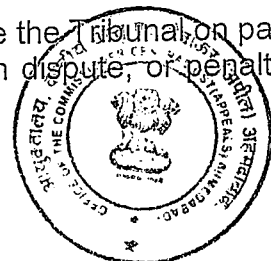
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT.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

These three appeals have been filed by M/s. Khurana Engineering Limited, 2nd Floor, MSK House, Near Kashiram Rana Bhawan, Passport Office Road, Ambawadi, Ahmedabad – 380015 (hereinafter referred to as “the appellant”) against Order-in-Original No. 38-40/CGST/Ahmd-South/JC/SR/2022-23 dated 21.11.2022 issued on 07.12.2022 (hereinafter referred to as “the impugned order”) passed by the Joint Commissioner, Central GST, Ahmedabad South (hereinafter referred to as “the adjudicating authority”).

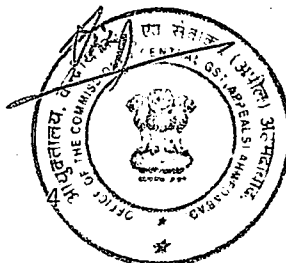
2. Briefly stated, the facts of the case are that the appellant was registered with the Service Tax Department vide Service Tax Registration No.AABCM4514FST001 under the category of Works Contract Service; Construction services other than residential complex, including commercial construction; Technical Inspection and Certification Agency Service; Supply of Tangible goods service; Works Contract Service; Legal Consultancy service; Rent-a-cab scheme operator service; Manpower recruitment/supply agency services; Transport of goods by road; goods transport agency service; Security Detective agency service; etc.

2.1 On verification of the records of the appellant the department observed that the appellant had provided construction service to Sabarmati Riverfront Development Corporation Limited (SRFDCL) and not paid the service tax claiming the services as exempted services provided to the Government authority.

2.2 Sabarmati Riverfront Development Corporation Limited (SRFDCL) has been launched as a Special Purpose Vehicle (SPV) under Section 149(3) of Indian Companies Act, 1956 by Ahmedabad Municipal Corporation (AMC). The SRFDCL entrusted the following works to the appellant under Works Contract Service:

1. Construction of Retaining wall, Reinforced anchor slab and special fill behind retaining wall on river Sabarmati.
2. Civil & Electrical works for development of Public Garden.
3. Constructions of General earth fill for construction behind RCC retaining wall.
4. Pier Protection works for Sardis Bridge on River Sabarmati.

2.3 The appellant has not paid Service Tax on the execution of above mentioned work considering exempted services provided to the Government 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 as per entry Sr. no 12(a) of Notification No. 25/2012- service tax dated 20.06.2012.

2.4 It is observed that Sabarmati Riverfront Development Corporation Limited (SRFDCL) is launched by Ahmedabad Municipal Corporation as a Special Purpose Vehicle (SPV)-under Section 149(3) of the Indian Companies Act, 1956, and it does not carry out any functions entrusted to a municipality under Article 243W of the constitution.

2.5 Thus, it is find that the authority SRFDCL does not fall under the definition of government authority as provided during the period 01.07.2012 to 31.03.2014 and hence the services provided by the appellant to SRFDCL for the above mentioned period cannot be claimed as exempted services and appellant is liable to pay service tax on the services provided to the SRFDCL.

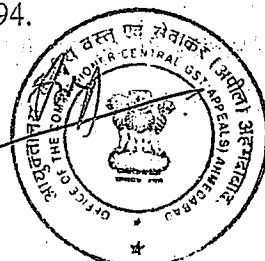
2.6 Further, it is observed that the SRFDCL was formed to develop the Sabarmati Riverfront on a build, maintain, operate & transfer (BMOT) basis by Ahmedabad Municipal Corporation. Based on the information available on website of SRFDCL, it was found that SRFDCL has commercial objectives because of providing following services:

1. The project has been planned to be self-financed. A small portion of reclaimed land will be sold for commercial development.
2. An Exhibition Centre at the Riverfront will be established to host trade fair facilities to serve the business community.
3. An Event ground will also be made for holding organized events of local and national importance.
4. Riverfront market will be developed.

2.7 After completion of the scrutiny, three Show Cause Notices were issued dated 22.04.2015, 03.10.2016 and 16.03.2017 proposing as detailed below:

A. SCN No. ST/1-15/Circle-IV/AP-XXI/FAR-145/R.P.09/14-15 dated 22.04.2015

- i. Demanding Service Tax of Rs. 60,06,194/- under proviso to Section 73 (1) of the Finance Act, 1994, for the period from 01.04.2011 to 31.03.2014, along with interest under section 75 of the Finance Act, 1994.



- ii. Imposing Penalty under Section 76, Section 77(2) and Section 78 of the Finance Act, 1994.

B. SCN NO. ST/04-22/O&A/ADC/DIV-II/2016-17 DATED 03.10.2016.

- i. Demanding Service Tax of Rs. 6,10,209/- under proviso to Section 73 (1) of the Finance Act, 1994, for the FY 2014-15, along with interest under section 75 of the Finance Act, 1994.
- ii. Imposing Penalty under Section 76 and Section 77(2) of the Finance Act, 1994.

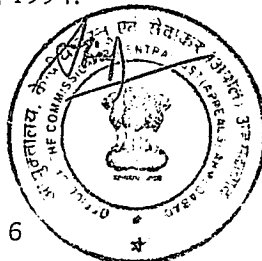
C. SCN No. SD-02/SCN-64/O&A/M. S. Khurana/2016-17 dated 16.03.2017

- i. Demanding Service Tax of Rs. 3,54,000/- under proviso to Section 73 (1) of the Finance Act, 1994, for the FY 2015-16, along with interest under section 75 of the Finance Act, 1994.
- ii. Imposing Penalty under Section 76, Section 77(2) and Section 78 of the Finance Act, 1994.

2.8 All the said three Show Cause Notices were adjudicated vide the impugned order, wherein the adjudicating authority has confirmed the demands of service tax along with interest and penalties, as detail below:

(A) For SCN No. ST/1-15/Circle-IV/AP-XXI/FAR-145/R.P.09/14-15 dated 22.04.2015: The adjudicating authority has confirmed the demand to the extent of Rs. 60,06,194/- along with interest under Section 75 of the Finance Act, 1994, He has imposed a penalty of Rs. 60,06,194/- under Section 78 of the Finance Act, 1994 and also imposed a penalty of Rs. 10,000/- under Section 77(2) of the Finance Act, 1994.

(B) For SCN No. SCN NO. ST/04-22/O&A/ADC/DIV-II/2016-17 DATED 03.10.2016: The adjudicating authority has confirmed the demand to the extent of Rs. 6,10,209/- along with interest under Section 75 of the Finance Act, 1994, He has imposed a penalty of Rs. 61,020/- under Section 76 of the Finance Act, 1994 and also imposed a penalty of Rs. 10,000/- under Section 77 of the Finance Act, 1994.



(C) For SCN No. SD-02/SCN-64/O&A/M. S. Khurana/2016-17 dated 16.03.2017: The adjudicating authority has confirmed the demand to the extent of Rs. 3,54,000/- along with interest under Section 75 of the Finance Act, 1994, He has imposed a penalty of Rs. 35,400/- under Section 76 of the Finance Act, 1994 and also imposed a penalty of Rs. 10,000/- under Section 77 of the Finance Act, 1994.

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

- As regarding the demand of service tax under the category of "Work Contract Service" up to the period 30.06.2012, the appellant submitted that M/s. SRFDCL has assigned the following work to the appellant as per work order:

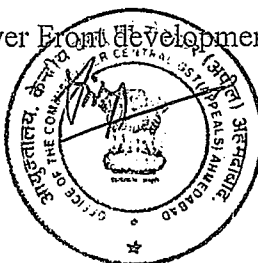
(i) **Work order of SRFDCL dated 30.12.2007:** Construction of RCC retaining wall, anchor slab and special fill etc. for length of 3310m on West Bank from Gandhi Bridge to Sardar Bridge & Pier protection works for Gandhi Bridge on river Sabarmati for Sabarmati River Front Development Corporation Ltd.

(ii) **Work order of SRFDCL dated 06.06.2007:** Construction of RCC retaining wall, reinforced anchor slab and special fill behind retaining wall for 3690 on WEST bank from railway bridge to Gandhi bridge on river Sabarmati for Sabarmati River Front Development corporation Ltd.

(iii) **Work order of SRFDCL dated 16.02.2009:** Pier protection works for Sardar Bridge on river Sabarmati for Sabarmati River Front Development Corporation Ltd.

(iv) **Work order of SRFDCL dated 08.03.2011:** Civil & electrical works for development of public garden between Subhash Bridge and Dudheshwar bridge on the east bank of Sabarmati riverfront development corporation ltd.

(v) **Work order of SRFDCL dated 14.10.2009:** Construction of general earth fill for the construction behind RCC retaining wall for the length of 3000m on west bank from Sardar bridge to Vasana Barrage on River Sabarmati for Sabarmati River Front Development Corporation Ltd.



- For the purposes of this sub-clause, "works contract" means a contract wherein, -

i. transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

ii. such contract is for the purposes of carrying out, -

(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise

(b) construction of a new building or a civil structure or a part thereof or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

(c) construction of a new residential complex or a part thereof; or

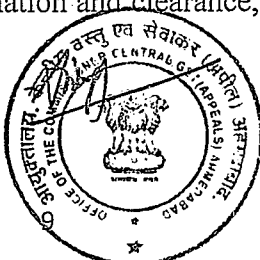
(d) completion and finishing services, repair, alteration, renovation or restoration of or similar services, in relation to (b) and (c); or

(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;

- It can be seen from the above reproduced portion that the definition at clause (b) is for "constructions" and which is for the purpose of commerce or industry. Further the said circular has defined public infrastructure work. It can be seen from the below reproduced clarification given by the Board in the said circular that infrastructure activities, which are concerned with welfare activity, for the citizens of this country has been excluded from the liability of Service tax.

"3. The second issue is about Government taking up construction activity of dams, buildings or infrastructure construction etc. through EPC (Engineering Procurement and Construction) mode. The said service is covered under Section 65(105) (zzzza) of Finance Act, 1994. The said section itself excludes works contract in respect of dams, tunnels, road, airports, railways, transport terminals, bridges & tunnels executed through EPC mode. Hence, works contract in respect of above works even if done through EPC mode are exempt from payment of Service tax."

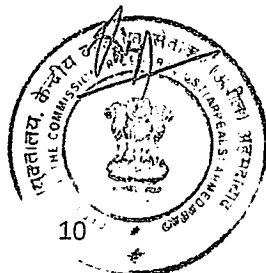
- The appellant submitted that the CBEC Circular No. 123/5/2010-TRU dated 24.05.2010 prima facie supports the view taken by this Tribunal in the above decisions. The said Circular in paragraph 2 clarified the scope of 'Commercial or industrial construction services', 'Erection, commissioning or installation services', 'Works contract services', 'Site formation and clearance, excavation, earth moving and



demolition services'. The relevant extract is reproduced below. Sub-pars (iii) is particularly relevant.

"2. Scope of certain taxable services in brief;

- i. 'Commercial or industrial construction services', in brief, cover construction of and the completion, finishing, repair, alteration, renovation, restoration or similar activities pertaining to buildings, civil structures, pipelines or conduits. Therefore, only such electrical works that are parts of (or which result in emergence of a fixture of buildings, civil structures, pipelines or conduits, are covered under the definition of this taxable service. Further, such activities undertaken in respect of roads, railways, transport terminals, bridges, tunnels and dams are outside the scope of levy of service tax under this taxable service.*
- ii. Under 'Erection, commissioning or installation services', the activities relevant to the instant issue are (a) the erection, commissioning and installation of plant, machinery, equipment or structures; and (b) the installation of electrical and electronic devices, including wiring or fitting there for. Thus, if an activity does not result in emergence of an erected, installed and commissioned plant, machinery, equipment or structure or does not result in installation of an electrical or electronic device (i.e. a machine or equipment that uses electricity to perform some other function) the same is outside the purview of this taxable service.*
- iii. 'Works Contract' incorporates the inclusions and exclusions of the aforementioned two taxable services (amongst others) and it is the nature of the contract (i.e. a contract wherein the transfer of property in goods involves is leviable to a tax as sale of goods) rather than the nature of activities undertaken, that distinguishes it from the previously stated taxable services. Thus, even in the case of 'works contract' if the nature of the activities is such that they are excluded from aforesaid two services then they would generally remain excluded from this taxable service as well.*
- iv. 'site formation and clearance, excavation, earthmoving and demolition services' are attracted only if the service providers provide these services independently and not as part of a complete work such as laying of cables under the road."*

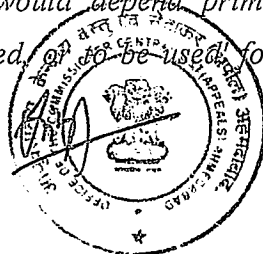


- The appellant submitted that on the basis of supra explanation, it is clear that, infrastructural work has been exempt from the service tax levy.
- Further, the appellant submitted that the appellant have entered into agreement with Sabarmati River Front Development Corporation Ltd (M/s. SRFDCL). M/s. SRFDCL has been created as a special purpose vehicle. The object of M/s. SRFDCL is to develop the river front of Sabarmati River in Ahmedabad. This is being done by reclaiming the land from the river bed of Sabarmati River and after the reclamation of the land, the reclaimed land is to be used for various purposes and part of the reclaimed land will be used for public purpose such as garden, promenades, walkways etc. and other part of the reclaimed land will be used for commercial buildings and residential buildings.
- The appellant submitted that from the above, it is clear that the work carried out by the appellant is in the nature of the public infrastructure, which has been exempt from the service tax since inception up to 30.06.2012 based on the Circular No. 80/10/2004-ST dated 17.09.2004, which read as under:

*"Service Tax - Budget changes for 2004-05 effective from 10th Sept., 2004
Circular No. 80/10/2004-S.T., dated 17.09.2004*

Services provided by a commercial concern in relation to construction, repairs, alteration or restoration of such buildings, civil structures or parts thereof which are used, occupied or engaged for the purposes of commerce and industry are covered under this new levy. In this case the service is essentially provided to a person who gets such constructions etc. done, by a building or civil contractor. Estate builders who construct buildings/civil structures for themselves (for their own use, renting it out or for selling it subsequently) are not taxable service providers. However, if-such real estate owners hire contractor/contractors, the payment made to such contractor would be subjected to service tax under this head. The tax is limited only in case the service is provided by a commercial concern. Thus service provided by a labourer engaged directly by the property owner or a contractor who does not have a business establishment would not be subject to service tax.

The leviability of service tax would depend primarily upon whether the building or civil structure is 'used, or to be used, for commerce or industry.

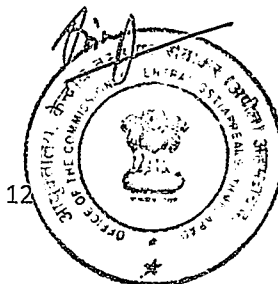


The information about this has to be gathered from the approved plan of the building or civil construction. Such constructions which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purposes of profit are not taxable, being noncommercial in nature. Generally, government buildings or civil constructions are used for residential, office purposes or for providing civic amenities. Thus, normally government constructions would not be taxable. However, if such constructions are for commercial purposes like local government bodies getting shops constructed for letting them out, such activity would be commercial and builders would be subjected to service tax.

In case of multi-purpose buildings such as residential-cum-commercial construction, tax would be leviable in case such immovable property is treated as a commercial property under the local/municipal laws.

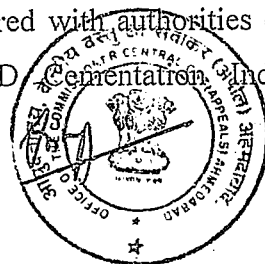
The definition of service specifically excludes construction of roads, airports; railway, transport terminals, bridge, tunnel, long distance pipelines and dams. In this regard it is clarified that any pipeline other than those running within an industrial and commercial establishment such as a factory, refinery and similar industrial establishments are long distance pipelines. Thus, construction of pipeline running within such an industrial and commercial establishment is within the scope of the levy".

- The appellant submitted that considering the above circular No. 80/10/2004-ST dated 17.09.2004, service is exempt from levy of service tax if it is provided to the non-commercial concern. In the present case, the appellant has provided services to the Government authority for SRFDCL project. The Government does not have any commercial intention for the project of SRFDCL. It is purely public infrastructure and hence it is exempt from levy of service tax.
- As regarding the demand of service tax w.e.f. 01.07.2012 the appellant submitted that they have entered into agreement with Sabarmati River Front Development Corporation Ltd (M/s. SRFDCL). M/s. SRFDCL has been created as a special purpose vehicle. The object of M/s. SRFDCL is to develop the river front of Sabarmati River in Ahmedabad. This is being done by reclaiming the land from the river bed of Sabarmati River and after the reclamation of the land, the reclaimed land is to be used



for various purposes and part of the reclaimed land will be used for public purpose such as garden, promenades, walkways etc. and other part of the reclaimed land will be used for commercial buildings and residential buildings.

- From the above, it is clear that the work carried out by the appellant is in the nature of the public infrastructure, which has been exempt from the service tax from 01.07.2012 based-on clause 12(a) of the mega exemption Notification No. 25/2012-ST, as per which, any construction for the govt. which has been in nature of civic amenities was exempt from the service during the impugned period. So appellant has rightly claimed exemption from the service tax on such income
- In respect of the aforesaid contention the appellant relied upon the following case laws:
 - a) ANAND CONSTRUCTION CO. Versus COMMISSIONER OF C. EX., KOLHAPUR – 2013 (32) S.T.R. 451 (Tri. - Mumbai)
 - b) COMMR. OF C.EX. (APPEALS), BANGALORE Versus KVR CONSTRUCTION – 2012 (26) S.T.R. 195 (Kar.)
 - c) NAGARJUNA CONSTRUCTION CO. LTD. versus C.C. & C.E., HYDERABAD-II – 2011 (22) S.T.R. 433 (Tri. - Bang.)
 - d) RAMKY INFRASTRUCTURE LTD. versus COMMR. OF CUS. & C. EX., HYDERABAD – 2011 (22) S.T.R. 85 (Tri. - Bang.)
 - e) LANGO INFRATECH LTD. versus COMMISSIONER OF SERVICE TAX, HYDERABAD – 2010 (19) S.T.R. 906 (Tri. - Bang.)
 - f) RADIUS CORPORATION LTD. Versus COMMISSIONER OF CENTRAL EXCISE,
 - g) RAIPUR – 2009 (14) S.T.R. 693 (Tri. - Del.)
- The appellant submitted that on the basis of the above law ratio service tax has not been applicable on such activities.
- Notwithstanding above on the basis of case of ITD Commentation India Ltd, reported in 2014 (36) S.T.R. 897 (Tri. - Mumbai), such service is classifiable under the category of "Site formation & clearance, execution & earthmoving demolition service". The appellant submitted that SRFDCL has given such type of works to various other contractors who are registered with authorities other than Service Tax Commissionerate, Ahmedabad, like ITD Cementation India Limited which is



registered with CST, Mumbai wherein these constructions have been classified under Site Formation and Clearance, Excavation and Earth moving Demolition Services.

- Thus, relied upon the aforesaid judgment and relied upon the exclusion clause of the definition of "site formation & clearance, excavation & earthmoving demolition service" as mentioned in para 10, 11 and 12 of the said decision, the appellant submitted that the services rendered by the appellant would get covered under the exclusion clause for renovating or restoring the water resources of water bodies. Hence, the show cause notice classifying the construction activities under Work Contract service is not maintainable.
- The show cause notice covers the period of 01.04.2011 to 31.03.2014. Audit report has been issued as on 22.04.2015 whereas the fact of the case has been in knowledge of the department since 2011. Thus, the extended period of limitation cannot be invoked in the present case since there is no suppression, wilful misstatement on the part of the appellant.
- The show cause notice has proposed to impose penalty under Section 78 of the Finance Act, 1994. The *appellant* has demonstrated above that they have not suppressed any information from the department and there was no willful misstatement on the part of the appellant. Hence the present case is not the case of fraud, suppression, wilful misstatement of facts, etc. Hence penalty under section 78 of the Act cannot be imposed.
- The appellant submitted that the penalty under Section 77 is not imposable since there is no short payment of service tax. As per the merits of the case, the appellant is not liable for payment of Service tax.

4. Personal hearing in the case was held on 14.07.2023. Shri Vipul Khandhar, Chartered Accountant, appeared on behalf of the appellant for personal hearing and reiterated the submission made in these three appeals and in the additional written submission handed over at the time of personal hearing. He submitted that the appellant provided Works Contract Service to Sabarmati Riverfront Development Corporation Ltd., government owned undertaking, for public infrastructure, which is exempt under the Notification No. 25/2012-ST Sr. No. 12(a). He further submitted that their case is fully covered by the decision of Hon'ble CESTAT Mumbai in the case of ITD Cementation India Ltd., which was upheld by the



Supreme Court. In view of the same, he requested to set aside the impugned orders and allow the appeals.

4.1 The appellant have in their additional written submission made during the course of personal hearing, inter alia reiterated the submission already made in the appeal memorandum.

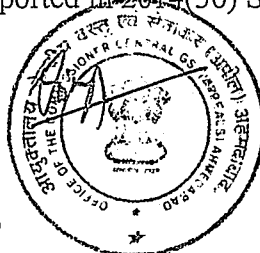
5. I have carefully gone through the facts of the case, grounds of appeal, submissions made in the Appeal Memorandum, during the course of personal hearing and documents available on record.

5.1 On going through the case records, it is found that in the present case the period covered comprise of the period before Negative regime of Service tax i.e. from 01.04.2011 to 30.06.2012 as well as after Negative regime i.e. from 01.07.2012 to 31.03.2016. The limited questions required to decide in the case is -

- (i) Whether the appellant is liable for service tax on service provided to SRFDCL under the category of "Work Contract Service" up to the period 30.06.2012 or not;
- (ii) Whether the appellant is liable for service tax on service provided to SRFDCL w.e.f. 01.07.2012 or not; and
- (iii) Whether the appellant is liable to pay interest and penalties as demanded or otherwise?

6. As regard, the service tax prior to 01.07.2012, i.e. from 01.04.2011 to 30.06.2012, I find that the appellant provided services to M/s. Sabarnati Riverfront Development Corporation Limited (SRFDCL).

6.1 It is observed that the main contention of the appellant is that the work carried out by them for SRFDCL was in relation to the public infrastructure and they have relied on clause (c) of CBEC Circular No. 116/10/2009-ST dated 15-09-2009. The activities involved were carried out for building infrastructure and constitute civic amenities provided by the Governments. I also find that the appellant also quoted Circular No. 80/10/2004-ST dated 17.09.2004, in support of their arguments. I also find that the appellant heavily relied upon the decision of the CESTAT, Mumbai in the case of ITD CEMENTATION INDIA LTD. Versus C.S.T, MUMBAI, MUMBAI-V, MUMBAI-I reported in 2014(36) STR 897 (Tri. Mumbai).



6.2 For ease of reference, I hereby reproduce, the relevant portion of Circular No. 116/10/2009-ST dated 15-09-2009; the definition of "works contracts" and Explanation thereof as per Section 65 (105) (zzzza); and the relevant portion of Circular No. 80/10/2004-ST dated 17.09.2004. Which are as under:

Circular No. 116/10/2009-ST dated 15-09-2009

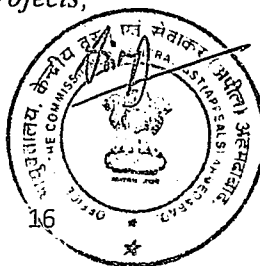
"3. The second issue is about Government taking up construction activity of dams, buildings or infrastructure construction etc. through EPC (Engineering Procurement and Construction) mode. The said service is covered under Section 65(105) (zzzza) of Finance Act, 1994. The said section itself excludes works contract in respect of dams, tunnels, road, airports, railways, transport terminals, bridges & tunnels executed through EPC mode. Hence, works contract in respect of above works even if done through EPC mode are exempt from payment of Service tax."

Section 65 (105) (zzzza): "taxable service" means any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation.

- For the purposes of this sub-clause, "works contract" means a contract wherein, -

- i. transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
- ii. such contract is for the purposes of carrying out, -
 - a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise,
 - b) construction of a new building or a civil structure or a part thereof or of a pipeline or conduit, primarily for the purposes of commerce or industry; or
 - c) construction of a new residential complex or a part thereof; or
 - d) completion and finishing services, repair, alteration, renovation or restoration of or similar services, in relation to (b) and (c); or
 - e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;



Circular No. 80/10/2004-ST dated 17.09.2004

“Construction services (commercial and industrial buildings or civil structures)

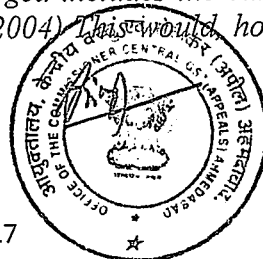
13.1 *Services provided by a commercial concern in relation to construction, repairs, alteration or restoration of such buildings, civil structures or parts thereof which are used, occupied or engaged for the purposes of commerce and industry are covered under this new levy. In this case the service is essentially provided to a person who gets such constructions etc. done, by a building or civil contractor. Estate builders who construct buildings/ civil structures for themselves (for their own use, renting it out or for selling it subsequently) are not taxable service providers. However, if such real estate owners hire contractor/ contractors, the payment made to such contractor would be subjected to service tax under this head. The tax is limited only in case the service is provided by a commercial concern. Thus service provided by a laborer engaged directly by the property owner or a contractor who does not have a business establishment would not be subject to service tax.*

13.2 *The leviability of service tax would depend primarily upon whether the building or civil structure is "used, or to be used" for commerce or industry. The information about this has to be gathered from the approved plan of the building or civil construction. Such constructions which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purposes of profit are not taxable, being noncommercial in nature. Generally, government buildings or civil constructions are used for residential, office purposes or for providing civic amenities. Thus, normally government constructions would not be taxable. However, if such constructions are for commercial purposes like local government bodies getting shops constructed for letting them out, such activity would be commercial and builders would be subjected to service tax.*

13.3 *In case of multi-purpose buildings such as residential cum commercial construction, tax would be leviable in case such immovable property is treated as a commercial property under the local/ municipal laws.*

13.4 *The definition of service specifically excludes construction of roads, airports, railway transport terminals, bridge, tunnel, long distance pipelines and dams. In this regard it is clarified that any pipeline other than those running within an industrial and commercial establishment such as a factory, refinery and similar industrial establishments are long distance pipelines. Thus, construction of pipeline running within such an industrial and commercial establishment is within the scope of the levy.*

13.5 *The gross value charged by the building contractors include the material cost, namely, the cost of cement, steel, fittings and fixtures, tiles etc. Under the Cenvat Credit Rules, 2004, the service provider can take credit of excise duty paid on such inputs. However, it has been pointed out that these materials are normally procured from the market and are not covered under the duty paying documents. Further, a general exemption is available to goods sold during the course of providing service (Notification No. 12/2003-ST) but the exemption is subject to the condition of availability of documentary proof specially indicating the value of the goods sold. In case of a composite contract, bifurcation of value of goods sold is often difficult. Considering these facts, an abatement of 67% has been provided in case of composite contracts where the gross amount charged includes the value of material cost. (refer notification No.15/04-ST, dated 10.09.2004) This would, however, be optional subject*



to the condition that no credit of input goods, capital goods and no benefit (under notification no. 12/2003-ST) of exemption towards cost of goods are availed."

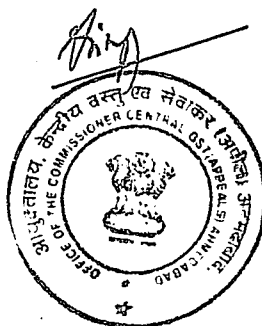
6.3 I find that SRFDCL has been launched as a Special Purpose Vehicle (SPV) under Section 149(3) of Indian Companies Act, 1956 by Ahmedabad Municipal Corporation (AMC). I also find that the SRFDCL was formed to develop the Sabarmati Riverfront on a build, maintain, operate & transfer (BMOT) basis by Ahmedabad Municipal Corporation, with the following three main objectives, as mentioned in the website of <https://sabarmatiriverfront.com> :

1. Environment Improvement - Reduction in erosion and flood to safeguard the city sewage diversion to clean the river water retention and recharge
2. Social Upliftment - Activities created of parks and public spaces provision of socio-cultural Amenities for the city.
3. Sustainable Development - Generation of resources, revitalisation of neighbourhoods. Aims to bring new life to the centre of the city.

6.4 I also find that SRFDCL entrusted the following works to the appellant under Works Contract Service:

1. Construction of Retaining wall, Reinforced anchor slab and special fill behind retaining wall on river Sabarmati.
2. Civil & Electrical works for development of Public Garden.
3. Constructions of General earth fill for construction behind RCC retaining wall.
4. Pier Protection works for Sardar Bridge on River Sabarmati.

6.5 From the above, it is crystal clear that the work carried out by the appellant for the SRFDCL were mainly related to land reclamation work and work related to development of Public Garden. On plain reading of the definition of work contracts, I find that the service provided by the appellant falls under the clause (ii)(b) of Explanation i.e. construction of a new building or a civil structure or a part thereof read with clause (ii)(e) of Explanation i.e. turnkey projects including engineering, procurement and construction or commissioning (EPC) projects. The work carried out by the appellant for building infrastructure and constitute civic amenities and not for commerce or industry. Thus, I find that whole work carried out by the appellant can not defined as "primarily for the purposes of commerce or industry". Therefore, I find that the service provided to SRFDCL by the appellant has been exempt from the service tax and the appellant is not required to pay any service tax on the service provided by them to SRFDCL during the period from 01.04.2011 to 30.06.2012.



6.6 I also find that the contention of the appellant that SRFDCL has given such type of works to various other contractors, one of them was ITD Cementation India Limited, wherein such constructions have been classified by Hon'ble CESTAT, Mumbai in the category of "Site Formation and Clearance, Excavation and Earth moving Demolition Services" in the case of ITD Cementation India Limited Vs. CST, Mumbai, Mumbai-V, Mumbai-I reported in 2014 (36) STR 897 (Tri. Mumbai). The relevant portion of the decision reads as under:

"10.

It would be seen from the main part of the definition that the said service includes "land reclamation work" as also "soil stabilization". We have gone through the project report as also the bid documents. Method statement in the bid document reads as:

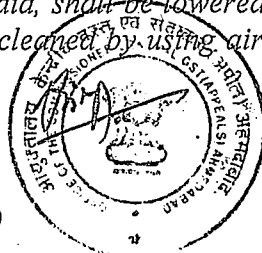
"1. The main activities involved in this tender are as follows:

- i. Cleaning and Grabbing, removing and disposing (including all leads and lifts) of all materials such as trees, bushes, shrubs, stumps, roots, grass weeds, top organic soil, garbage, solid waste of any thickness, rubbish etc.*
- ii. Backfilling under water with special fill of construction of embankment of required height without compaction.*
- iii. Backfilling above water level with special fill for construction of embankment of required height with compaction.*
- iv. RCC Diaphragm wall 600 mm thick, 15.00 - 16.00 m depth (including construction of pre-trench wall).*
- v. Providing and laying of R.C.C. hume pipes and construction of box culverts. Hume pipes and box culverts will be connected to diaphragm wall.*
- vi. Construction of anchor slab, cut off wall for diaphragm wall anchorage & parapet wall.*

2. Embankment construction with special fill under water will be done by end tipping without compaction. Special fill will have angle of internal friction of about 30° and maximum particle size not exceeding 75 mm. Embankment construction above water level will be done with the above mentioned material but with compaction at OMC 95% relative compaction.

3. Diaphragm Wall –

- a) A RCC Guide Wall of 1.20 metre depth and 100 mm thickness with nominal reinforcement will be constructed from the working level. The top of guide work shall be above existing ground level.*
- b) Construction of diaphragm wall panels of maximum width of 5.4 to 6.0 metres will be constructed. Trenching shall be carried out up to stipulated depth by using rope operated grab handled by suitable crane using bentonite of suitable consistency. The width of the trench excavated shall be 60 cms.*
- c) Chiselling shall be carried out by using heavy chisels and chiselled material will be removed by using trenching grabs. The process of chiselling continues till it reaches the founding level.*
- d) On reaching the founding level, prefabricated reinforcement cage as per the drawings will be lowered into the diaphragm wall panels. The cage will be tack welded. All laps chairs spacers shall be measured and paid for.*
- e) The tremmie pipe of 200 mm dia, shall be lowered into the excavated panel and bottom of the panel will be cleaned by using air flushing method. During*



the operation, fresh bentonite slurry will keep flowing continuously in the trench to ensure that the bentonite level always remains full.

f) M-30 grade concrete from hatching plant shall be placed using the tremie pipes up to the required level.

g) Tolerance for Diaphragm Wall will be 8 cms. in plan, 1 in 80 in vertically and maximum 10 cms towards undulation of exposed inside face of the Diaphragm Wall.

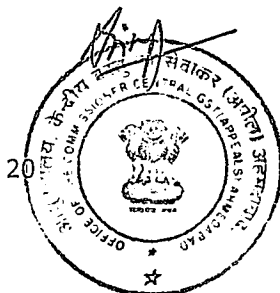
4. Dismantling of Diaphragm wall will be carried out for laying storm water outfalls with RCC Hume pipes and Box culvert.

5. Concrete for Anchor slab, Cut off wall and parapet will be carried out after dismantling of diaphragm wall and lying of Hume pipe lines.

6. In order to maintain the progress & quality of the work, it is imperative that water level in the river should be minimum 1.00 metre below the top of the guide wall. We have already experienced collapsing of the diaphragm panels when water level increases beyond required level due to discharge of water from the upstream side of river. This will reflect on the progress & quality of the work and we shall be compensated for retrenching of the panels & excess concrete consumed in the work due to this variation."

It is seen from the said documents that appellant are required to construct diaphragm wall, anchor slab and retention wall with special fill for guide bund in different sectors alongside the Western and Eastern Bank of the Sabarmati River in Ahmedabad. The said work is to reclaim a part of the river bed land of the Sabarmati River. Keeping in view, the nature of activity, we have no hesitation in holding that the whole activity is in connection with the reclamation of land. In our view, this is the main and most important activity for reclaiming the land. In fact even from the expenditure angle the amount spent in the said active would form the major portion of expenditure in connection with the reclamation of the land (excluding the facilities like commercial complex, residential complex, roads etc. to be construed later on the reclaimed land.) We have therefore no hesitation in holding that the activities undertaken by the appellants are site formation and clearance, excavation and earth moving and demolition service.

11. The Id. Advocate without specifying in so many words, has attempted to indicate that the services rendered by the appellant are covered by commercial or industrial construction service, perhaps due to the fact that they are undertaking civil work. We have carefully considered this submission: we have also gone through the maps and activities. It may be true that the activity undertaken by the appellant involved some civil work but the nature of the said civil work is for reclaiming the land from the river. A part of the wall is below the river bed level, a part of it is above. Angle slab are used for supporting and after filling the top of the land is used for various purposes. Retention wall is again to support. We also note that the area is filled with sand etc. thus over all the work is of a nature which would squarely get covered under the activity of "reclamation of land" and hence, in our view, the service would be squarely covered under "site formation and clearance, excavation and earth moving and demolition services" only. Learned Advocate has quoted Board's Circular, dated 24-5-2010 which clarifies that "site formation and clearance, excavation and earth moving and demolition services" are attracted only if the service providers provide these services independently and not as part of complete work such as laying of cables under the road. In the present case, the main activity is land reclamation and the activity undertaken by the appellant is the most important and main part in the



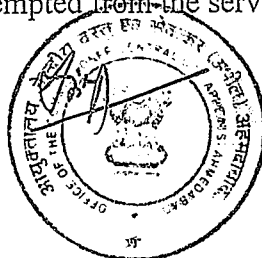
process of reclaiming the land. In view of this fact, we do not find that the said clarification supports the cause of the appellant.

12. The second contention of the Id. Advocate is that their activities will get excluded under the exclusion clause of the "site formation and clearance, excavation and earth moving and demolition service". The said exclusion clause excludes services provided in relation to agriculture, irrigation, and watershed development and drilling, digging, repairing, renovating or restoring of water sources and water bodies. The activities are being undertaken on Sabarmati River and the river is a water body. We find strength in the argument of the appellant that their activities are in the nature of renovating or restoring of water sources and water bodies. Even though, the river front that is being developed is new project and is going to create new facilities but the same can be considered in a broad sense as renovating or restoring of water sources and water bodies. We find in the impugned order a narrow view has been taken for the said terms and it is taken to mean repairing and restoring the existing facilities. In our view, the water body is already existing, what is being done is to renovate the banks of the river. In view of this position, we are of the view though the activity undertaken by the appellants are covered by the main definition but get excluded due to the exclusion clause. In view of this analysis, the activity undertaken by the appellant will not get covered by the "site formation and clearance, excavation and earth moving and demolition service" and accordingly no service tax would be chargeable."

6.7 In view of the aforesaid decision of Hon'ble CESTAT, Mumbai, I also find that the service provided by the appellant to SRFDCL in respect of land reclamation work is required to be classified in the category of "Site Formation and Clearance, Excavation and Earth moving Demolition Services" and the same also exempted as the activities undertaken by the appellant excluded under the exclusion clause of the "site formation and clearance, excavation and earth moving and demolition service". Thus, on this ground also the appellant is not required to pay any service tax on the service provided by them during the period from 01.04.2011 to 30.06.2012.

7. As regard, the service tax after negative regime of service tax i.e. from 01.07.2012 to 31.03.2016, I find that the appellant provided services to M/s. Sabarmati Riverfront Development Corporation Limited (SRFDCL)

7.1 It is observed that the main contentions of the appellant are that (i) they have provided their services to the Government 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 as per entry Sr. no 12(a) of Notification No. 25/2012- service tax dated 20.06.2012, hence, exempted from the service tax.



7.2 It is also observed that the adjudicating authority has confirmed the demand of service tax in the impugned order observing that SRFDCL not falls under the definition of governmental authority as defined under Para 2(s) of the Notification No. 25/2012-ST dated 20.06.2012 as SRFDCL does not carry out any functions entrusted to a municipality under article 243 W of the constitution. The relevant portion of the impugned order read as under:

“28.

It emerges from the above that the purpose for which Sabarmati riverfront development corporation limited was not created for the performance of functions and the implementation of schemes in relation to the matters listed in the twelfth schedule of the constitution. The matters listed in the twelfth schedule of the constitution mainly relate to matters of economic development and social justice. In the instant case, SRFDCL has commercial objectives as mentioned above. Thus, it cannot be said that SRFDCL carries out the function entrusted to a municipality under article 243w of the constitution.

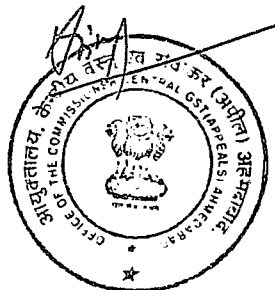
29. *Further, the assessee has also not produced any evidence nor the website of SRFDCL mentions that SRFDCL has been set up by an act of parliament or state legislature. Therefore, on this account also, the assessee is not eligible for exemption under notification no 25/2012- service tax dated 20.06.2012.”*

7.3 For ease of reference, I hereby produce the relevant abstract of the Notification No. 25/2012-ST dated 20.06.2012 as amended and list of function mentioned under Article 243W of the Constitution, 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 01.03.2015 w.e.f. 01.04.2015

.....

2. Definitions. – For the purpose of this notification, unless the context otherwise requires, –

(s) "governmental authority" means a board, or an authority or any other body

(i) set up by an Act of the Parliament or a State Legislature; or

(ii) established by Government,

with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution”

“TWELFTH SCHEDULE (Article 243W)

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and commercial purposes.
6. Public health, sanitation conservancy and solid waste management.
7. Fire services.
8. Urban forestry, protection of the environment and promotion of ecological aspects.
9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.
10. Slum improvement and upgradation.
11. Urban poverty alleviation.
12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
13. Promotion of cultural, educational and aesthetic aspects.



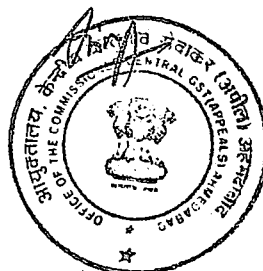
14. *Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.*
15. *Cattle pounds; prevention of cruelty to animals.*
16. *Vital statistics including registration of births and deaths.*
17. *Public amenities including street lighting, parking lots, bus stops and public conveniences.*
18. *Regulation of slaughter houses and tanneries."*

7.4 In view of the aforesaid provisions of Notification No. 25/2012-ST, I find that the SRFDCL has been established under Section 149(3) of Indian Companies Act, 1956 by Ahmedabad Municipal Corporation (AMC) and the same was established for the three main objectives, as mentioned below:

1. Environment Improvement - Reduction in erosion and flood to safeguard the city sewage diversion to clean the river water retention and recharge
2. Social Upliftment - Activities created of parks and public spaces provision of socio-cultural Amenities for the city.
3. Sustainable Development - Generation of resources, revitalisation of neighbourhoods. Aims to bring new life to the centre of the city.

7.5 All the above objectives related to Functions viz. (1) Urban planning including town planning; (3) Planning for economic and social development; (8) Urban forestry, protection of the environment and promotion of ecological aspects; (12) Provision of urban amenities and facilities such as parks, gardens, playgrounds; etc. mentioned in Article 243 (Twelfth Schedule). Thus, I find that the SRFDCL carries out the function entrusted to a municipality under article 243w of the constitution and can be termed as "governmental authority" as defined under Para 2(s) of the Notification No. 25/2012-ST dated 20.06.2012, as amended. Therefore, the service provided by the appellant to SRFDCL exempted from the service tax as per Sr. No. 12(a) of Notification No. 25/2012- ST dated 20.06.2012. Thus, the appellant is not required to pay any service tax on the service provided by them during the period from from 01.07.2012 to 31.03.2016.

8. In view of above, I hold that the impugned order passed by the adjudicating authority confirming demand of Service Tax, in respect of services provided by the appellant to SRFDCL is not legal and proper and deserve to be set aside. Since the demand of service tax is not sustainable on merits, I am not delving into the aspect of limitation raised by the

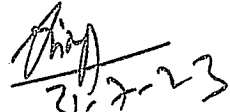


appellant. When the demand fails, there does not arise any question of charging interest or imposing penalty in the case.

9. Accordingly, I set aside the impugned order and allow the appeal filed by the appellant.


10. अपील कर्ता 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.


(Shiv Pratap Singh)
Commissioner (Appeals)

Date : 31.07.2023

Attested


(R. C. Maniyar)
Superintendent(Appeals),
CGST, Ahmedabad



Appellant

By RPAD / SPEED POST

To,
M/s. Khurana Engineering Limited,
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Passport Office Road,
Ambawadi, Ahmedabad – 380015

Respondent

The Joint Commissioner,
CGST,
Ahmedabad South

Copy to :

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

- 5) Guard File
- 6) PA file

