

<p>T017_आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN: 20240264WT0000712987

फा.सं./F.No. STC/4-34/O&A/2014-15

आदेश की तारीख/Date of Order :- 20.02.2024

जारी करने की तारीख/Date of Issue :- 20.02.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 81 to 84/ADC/LD/2023-24

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद - 380015 को प्रारूप संख्या एस टी -४ (ST-4) में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner (Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या एस टी -४ (ST-4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

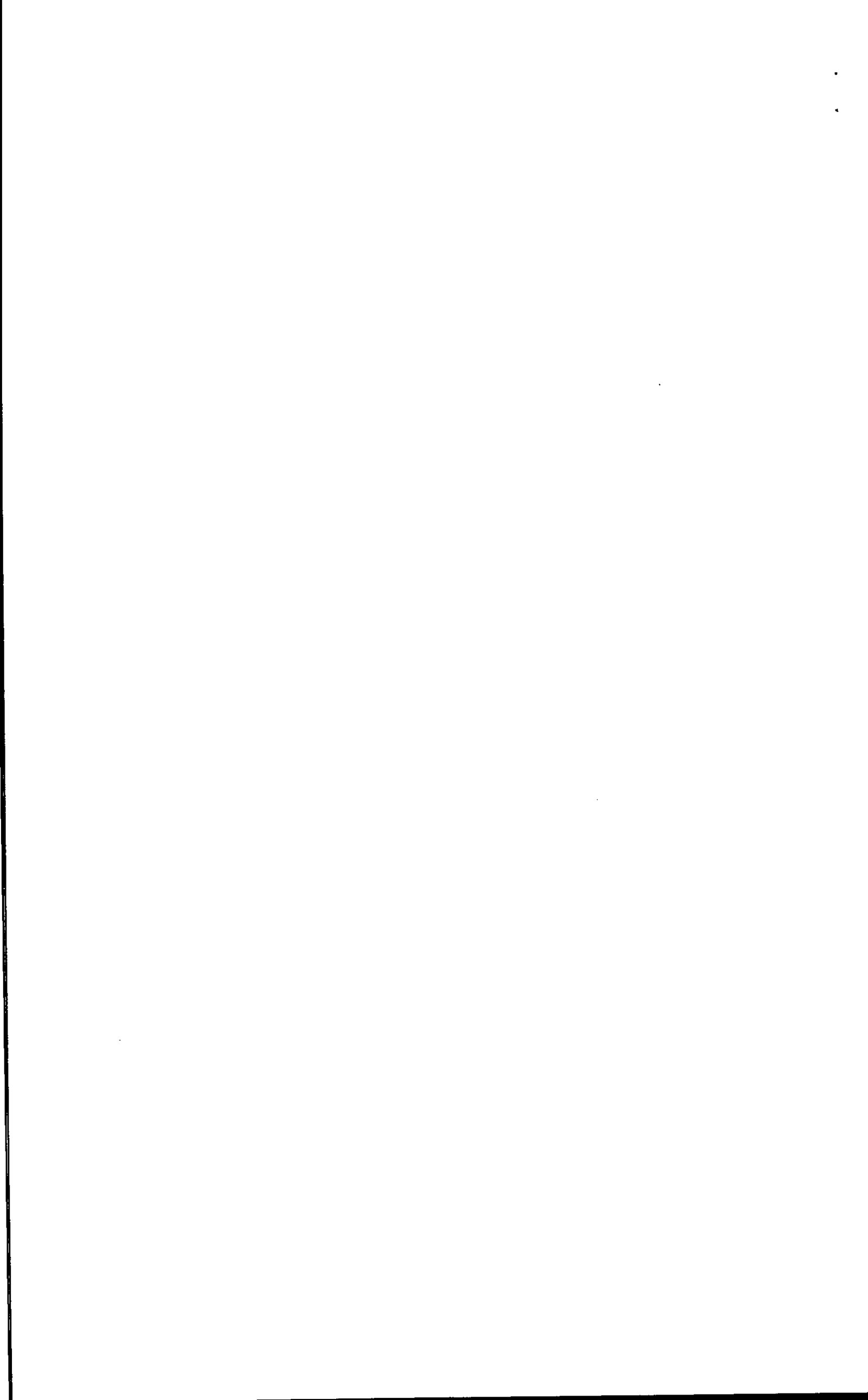
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिस पर रु .5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form एस टी -४ (ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना / Proceedings initiated against Show Cause Notices F. No. (i) STC/04-20/O&A/13-14 dated 13.05.2014, (ii) STC/04-34/O&A/14-15 dated 07.10.2014 (iii) STC/04-38/O&A/15-16 dated 05.10.2015 and (iv) STC/04-39/O&A/Visat/16-17 dated 29.03.2017 issued to M/s. Visat Construction Co., B-22, Sarvodaya Society VI-I, Ghatlodiya, Ahmedabad.



BRIEF FACTS OF THE CASE:

M/s Visat Construction Co., B-22, Sarvodya Society VI-I Ghatlodiya, Ahmedabad (hereinafter referred to as 'the said assessee') are engaged in the business of providing, laying Road work and jointing RCC pipelines projects for sewerage & drainage lines of Ahmedabad Municipal Corporation(AMC), Ahmedabad Urban Development Authority(AUDA) & other government departments under the category of "Works Contract Service" and for the same are registered with the Service Tax Department having Service Tax Registration No. AAUPD7880KST001 dated 19.12.07.

2. During the scrutiny of ST-3 returns, it was revealed that the said assessee had wrongly claimed the exemption under Notification No. 41/2009-ST dtd. 23.10.2009 for providing and laying pipes for sewerage and drainage lines of Ahmedabad Municipal Corporation(AMC), Ahmedabad Urban Development Authority(AUDA) and other government departments. Accordingly, show cause notices covering the period Oct' 09 to Sept' 10, Oct'10 to Sept' 11 were issued to M/s Visat Construction Co., B-22, Sarvodya Society VI-I Ghatlodiya, Ahmedabad. The details of the said SCNs are as follows :

Table 1

Sr. No.	Show Cause Notice File No.	Date	Issued by	Period	Amount of Service Tax (Rs.)
1	STC/4-139/O&A/10-11	18.04.2011	The Commissioner of Service Tax, Ahmedabad.	October-09 to March-10 & April-10 to September-10	70,96,205 /-
2	STC/4-101/O&A/ADC/D-2/11-12	04.04.2012	The Additional Commissioner of Service Tax, Ahmedabad.	October-10 to March-11 & April-11 to September-11	35,09,803 /-

3. Show Cause Notice No.- STC/4-139/O&A/10-11 dated 18.04.2011 was decided vide OIO No.- STC/22/Comm./AHD/2012 dated 13.04.2012 and Show Cause Notice No.- STC/4-101/O&A/ADC/D-2/11-12 dated 04.04.2012 was decided vide OIO No.- 51/STC/AHD/ADC(JSN)/2012-13 dated 11.03.2013 wherein the adjudicating authorities had confirmed the Service Tax liability under Section 73 of Finance Act 1994 alongwith Interest and Penalty u/s 76 & 77 of the Finance Act 1994 on ground that as per definition of "commercial" as defined in the New Oxford Dictionary and by the G.O.I.(M.O.F.), DOR, CBEC(TRU) in their D.O.F. No. 334/1/2010-TRU dated 26.02.2010 related to the Budget 2010-11, the activity of laying of sewerage/drainage pipeline is meant for sanitation purpose, however, neither AMC/AUDA is an organization established solely for the purpose of sanitation. Further, observing that it is a well known fact that civic services of providing water, sewerage etc are not free

to the resident of housing complexes and owners/user of commercial complexes but these services are provided by charging fees. Therefore, AUDA and AMC by no stretch of imagination are engaged solely in any charitable or philanthropic activity.

4. Further, the said assessee had continued the above practice of wrong availment of exemption under Notification No. 41/2009-ST dtd. 23.10.2009 for providing and laying pipes for sewerage and drainage lines of AMC, AUDA and other government departments. Therefore, information regarding service tax payable for the subsequent period was called for from the said assessee and same was provided by them. On the basis of details provided by the said assessee following Periodical Show Cause Notices were issued to the M/s Visat Construction Co., B-22, Sarvodya Society VI-I Ghatlodiya, Ahmedabad wherein Service Tax Duty under Section 73(1) of the Finance Act 1994, Interest under Section 75 and Penalty under Section 76 & 77 of the Finance Act 1994 was proposed:-

Table-2

Sr. No.	Show Cause Notice File No.	Date	Period	Amount of Service Tax (Rs.)	Issued by
1	STC/04-20/O&A/13-14	13.05.2014	Oct 11 to June 12	62,41,825/-	The Commissioner of Service Tax, Ahmedabad
2	STC/04-34/O&A/14-15	07.10.2014	July 12 to 31.03.14	96,04,329/-	The Commissioner of Service Tax, Ahmedabad
3	STC/04-38/O&A/15-16	05.10.2015	F.Y.2014-15	76,27,080/-	The Commissioner of Service Tax, Ahmedabad
4	STC/04-39/O&A/Visat/16-17	29.03.2017	01.04.15 to 31.03.16	57,45,182/-	The Additional Commissioner of Service Tax, Ahmedabad

5. Further, it was noticed that on similar issue i.e. providing services of laying of pipelines for water distribution to M/s GWSSB in case of M/s Ramky Infrastructure, department had filed an appeal before CESTAT Ahmedabad vide Departmental Appeal No.- ST/543/2012. Therefore, Show Cause Notices No. (i) STC/04-20/O&A/13-14 dated 13.05.2014, (ii) STC/04-34/O&A/14-15 dated 07.10.2014, (iii) STC/04-38/O&A/15-16 dated 05.10.2015 and (iv) STC/04-39/O&A/Visat/16-17 dated 29.03.2017 were transferred in Call Book on 18.12.2014 and 28.12.2017 in lieu of Circular No.- 719/35/2003 dated 28.05.2003 under category- 1 cases i.e. cases in which department has gone in appeal to the appropriate authority.

6. Meanwhile, aggrieved by the OIO No.- 51/STC/AHD/ADC(JSN)/2012-13 dated 11.03.2013, the said assessee had filed an appeal before the Commissioner (Appeals), CGST, Ahmedabad who vide OIA No.- AHM-SVTAX-000-APP-040-14-15 dated 19.05.2014 had set aside said demand. However,

department had filed an appeal before CESTAT Ahmedabad against said OIA dated 19.05.2014 which was dismissed as withdrawn by CESTAT, Ahmedabad based on monetary ground vide Final Order No. A/12162/2019 dated 07.11.2019. Further, aggrieved by the OIO No.- STC/22/Comm./AHD/2012 dated 13.04.2012, the said assessee filed an appeal before CESTAT Ahmedabad who vide Final Order No. A/11405/2022 dated 18.11.2022 disposed appeal as abated as proprietor of the appellant Company had expired.

7. Further, it was observed that Departmental Appeal No.- ST/543/2012 in case of M/s Ramky Infrastructure was disposed off by the CESTAT Ahmedabad vide Final Order No.- 12606/2023 dated 10.11.2023. Subsequently, Show Cause Notices No. (i) STC/04-20/O&A/13-14 dated 13.05.2014, (ii) STC/04-34/O&A/14-15 dated 07.10.2014, (iii) STC/04-38/O&A/15-16 dated 05.10.2015 and (iv) STC/04-39/O&A/Visat/16-17 dated 29.03.2017 were retrieved from call book by the competent authority for adjudication purpose on 20.12.2023. Further, Corrigendum dated 01.02.2024 were issued to SCN No.- i) STC/04-20/O&A/13-14 dated 13.05.2014, (ii) STC/04-34/O&A/14-15 dated 07.10.2014 and (iii) STC/04-38/O&A/15-16 dated 05.10.2015 by virtue which these three SCNs made answerable to the Additional Commissioner of Central GST & Central Excise, Ahmedabad North.

PERSONNEL HEARING & DEFENCE REPLY :

8. The personnel hearings were granted to the said assessee on 30.01.2024 and 12.02.2024, but nobody appeared on the behalf of the said assessee. However vide letter dated 08.02.2024 Shri Saileshbhai Jivanbhai Desai, son of Shri Jivanbhai Jorabhai Desai, Proprietor of M/s Visat Construction Co has submitted that his father Shri Jivanbhai Jorabhai Desai has expired on 04.01.2021 and accordingly requested to abate the proceedings. He also submitted copy of Death Certificate No. D202110006376 dated 07.01.2021 issued by the Amdavad Municipal Corporation.

DISCUSSION AND FINDINGS:-

9. The proceedings under the provisions of the Finance Act, 1994 framed there under are saved by Section 174 of the Central Goods & Service Tax Act, 2017 and accordingly I am proceeding further.

10. In the instant case, I have carefully gone through the four Show Cause Notices, reply to SCNs, facts of the case on record and find that following four Periodical Show Cause Notices were issued to the M/s Visat Construction Co., B-22, Sarvodya Society VI-I Ghatlodiya, Ahmedabad Limited on ground that said assessee had wrongly availed service tax exemption for providing and laying pipes for sewerage and drainage lines of Ahmedabad Municipal Corporation(AMC), Ahmedabad Urban Development Authority(AUDA) and other government departments. Further, in said SCNs Service Tax demand under Section 73(1) of Finance Act 1994, Interest under Section 75 and Penalty under Section 76 & 77 of Finance Act 1994 was proposed:-

Table-3

Sr. No.	Show Cause Notice File No.	Date	Period	Amount of Service Tax (Rs.)
1	STC/04-20/O&A/13-14	13.05.2014	Oct 11 to June 12	62,41,825/-
2	STC/04-34/O&A/14-15	07.10.2014	July 12 to 31.03.14	96,04,329/-
3	STC/04-38/O&A/15-16	05.10.2015	F.Y.2014-15	76,27,080/-
4	STC/04-39/O&A/Visat/16-17	29.03.2017	01.04.15 to 31.03.16	57,45,182/-

11. As per records available, I find that the issue to be decided in this case is whether the Construction work of laying of drainage/sewerage pipeline and related construction work carried out by the said assessee for Ahmedabad Urban Development Authority (AUDA), Ahmedabad Municipal Corporation (AMC) and other Government departments is a taxable service under "Works Contract Service" as per Section 65(105)(zzzza) of the Finance Act, 1994 or not.

12. In this regard, I find that on the basis of pendency of Departmental Appeal No.- ST/543/2012 in case of M/s Ramky Infrastructure before CESTAT Ahmedabad, Show Cause Notices No. (i) STC/04-20/O&A/13-14 dated 13.05.2014, (ii) STC/04-34/O&A/14-15 dated 07.10.2014, (iii) STC/04-38/O&A/15-16 dated 05.10.2015 and (iv) STC/04-39/O&A/Visat/16-17 dated 29.03.2017 were transferred in Call Book on 18.12.2014 and 28.12.2017 in lieu of Circular No.- 719/35/2003 dated 28.05.2003 under category- 1 cases i.e. cases in which department has gone in appeal to the appropriate authority. Further, I find that Departmental Appeal No.- ST/543/2012 has been dismissed by CESTAT Ahmedabad vide Final Order No.- 12606/2023 dated 10.11.2023. Accordingly, Show Cause Notices No. (i) STC/04-20/O&A/13-14 dated 13.05.2014, (ii) STC/04-34/O&A/14-15 dated 07.10.2014, (iii) STC/04-38/O&A/15-16 dated 05.10.2015 and (iv) STC/04-39/O&A/Visat/16-17 dated 29.03.2017 were retrieved from the call book by the competent authority for adjudication purpose on 20.12.2023.

13. In view of above, I find that Show Cause Notices No. (i) STC/04-20/O&A/13-14 dated 13.05.2014, (ii) STC/04-34/O&A/14-15 dated 07.10.2014, (iii) STC/04-38/O&A/15-16 dated 05.10.2015 and (iv) STC/04-39/O&A/Visat/16-17 dated 29.03.2017 were retrieved from call book and the case is being taken for adjudication. I find that CESTAT Ahmedabad vide Final Order No.- 12606/2023 dated 10.11.2023 in case of M/s Ramky Infrastructure has held that service of laying of pipeline for Gujarat Water Supply & Sewerage Board (GWSSB) is not falling under the service of industrial or commercial construction service and hence are not taxable. Relevant para of said judgement is reproduced below:-

4. on the careful consideration of the submission made by both the sides and perusal of record, we find that as per the fact the appellants have

provided the service of laying of pipeline for the project of Gujarat Water Supply & Sewerage Board (GWSSB). The laying of pipeline for the government cannot be considered as Industrial or Commercial Construction Service. This issue has been considered in the following judgments:

In the case of BMS Project Private Limited the Hon'ble Gujarat High Court has passed following decision:

"[Order per : Akil Kureshi, J. (Oral)]. - Department has filed this appeal to challenge the judgment of CESTAT dated 30-1-2017. Following questions are presented for our consideration :

- (i) Whether the activities of M/s. GWSSB i.e. purchasing and selling water falls within the meaning of 'commerce' or a 'commercial activity' as defined under 'Commercial or Industrial Construction Service' in Sec.65(25b) of Chapter V of the Finance Act, 1994?
 - (ii) Whether the activities of M/s. GWSSB and its status as an 'industry' under Industrial Disputes Act, 1947 falls within the meaning of 'industry' or 'industrial activity' as defined under 'Commercial or Industrial Construction Service' in Sec. 65(25b) of Chapter V of the Finance Act, 1994?
 - (iii) Whether the usage of pipelines laid/constructed by M/s. BMS Projects Pvt. Ltd. for M/s. GWSSB for transporting the traded water, falls within the scope of the expressions 'used, occupied, or engaged, primarily in, commerce of industry or work intended for commerce or industry as specified in the above mentioned definition of Commercial or Industrial Construction Service?
 - (iv) Whether CESTAT was justified in treating the activities of M/s. GWSSB as not being commercial or industrial activities or that the usage of Pipelines laid by M/s. BMS Projects Pvt. Ltd., were not for use in commerce or industry?"
 - (v) Whether CESTAT was justified in holding that all activities which are concerned with welfare of citizens are excluded from liability of Service tax?
 - (vi) Whether in the facts and circumstances of the case, CESTAT was justified in setting aside the Order-in-Original passed by the Commissioner and in allowing the appeal filed by M/s. BMS Projects Pvt. Ltd.?
2. Respondent is engaged in providing construction services, for which purpose, it is registered in the category of commercial or industrial construction service with the Central Excise Authorities. Issue pertains to levy of service tax on the service provided by the respondent in laying down long distance pipelines for transfer of drinking water in the State of Gujarat pursuant to a contract awarded by Gujarat Water Supply and Sewerage Board ('GWSSB' for short). The stand of the department is that such service is taxable service under the category of commercial and industrial construction service as defined under Section 65(25b) of the Finance Act, 1994 (hereinafter to be referred to as 'the

Act' for short). When such demand was confirmed by the Commissioner, the assessee approached the Tribunal. The Tribunal by the impugned judgment reversed the decision of the Commissioner by relying on two decisions of the Tribunal involving similar issues in case of *Dinesh Chandra Agarwal Infracon P. Ltd. v. C.C.E., Ahmedabad* reported in 2011 (21) S.T.R. 41(Tri.-Ahmd.) and in case of *Larsen & Toubro Ltd. v. Commissioner of Service Tax, Ahmedabad*, reported in 2011 (22) S.T.R. 459(Tri.-Ahmd.). The Tribunal has not recorded its independent detailed reasons but primarily relied on the earlier decisions on the issue. Learned counsel for the department has made available a judgment of Bangalore bench of the Tribunal in case of *Nagarjuna Construction Co.Ltd. v. Commr. of C.Ex., Hyderabad* reported in 2010 (19) S.T.R. 259(Tri.-Bang.) in which similar issue came up for consideration and was discussed at length. We have perused such judgment in which, the Tribunal has analyzed the constitution of GWSSB, its status and its activities. The Tribunal noted that GWSSB was created by the Government of Gujarat to plan and implement the drinking water supply and sanitation policy and to operate and maintain the water supply schemes to develop human resources for the effective implementation of programmes among others. It was noted that GWSSB was created under statute. It was not enacted under a trade or commerce and was engaged solely in supplying potable water to supply different parts of the State. It was noted that only a small portion of the water is supplied to the industries at a higher cost. Such sale was merely incidental and ancillary to their main objective. The Tribunal noted that 90% of the water supplied by the Board was to the Gram Panchayats, Nagar Palikas and Nagar Panchayats at a non-commercial rate. The Board did not have any profit motive in carrying out such activities. In this context, the Tribunal noted the definition of commercial or industrial construction service provided under Section 65(25b) of the Act, which reads as under

'Commercial or Industrial Construction Service' means-

- (a) construction of a new building or a civil structure or a part thereof; or
- (b) Construction of pipeline or conduit; or
- (c) completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services, in relation to building or civil structure; or
- (d) repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit, which is -
 - (i) used, or to be used, primary for; or
 - (ii) occupied, or to be occupied, primarily with; or
 - (iii) engaged, or to be engaged, primarily in, commerce or industry, or work intended for commerce or industry, but does not include such services provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams."

3. In the context of our case, as per this definition therefore, a service to be included within the meaning of commercial or industrial construction services, different activities specified in clauses (a) to (d) thereof are such which are used or to be used primarily for commercial or industry. In this context, the Tribunal noted that GWSSB was constituted under an Act for carrying out following duties and functions :

“(a) To prepare, execute, promote and finance the schemes for supply of water and for sewerage and sewage disposal;

(b) To render all necessary services in regard to water supply and sewerage to the State Government and local bodies and on request to private institutions or individuals also;

(c) To prepare draft State Plans for water supply, sewerage and drainage on the directions of the State Government.

(d) To assess the requirements of materials and arrange for their procurement and utilization;

(e) To assess the requirements of materials and arrange for their procurement and utilization;

(f) To establish State standards for water supply and sewerage services;

(g) To review annually the technical, financial, economic and other aspects of water supply and sewerage system of every scheme of the Board of the local- bodies which have entered into an agreement with the Board;

(h) To establish and maintain a facility to review and apprise the technical, financial, economic and other pertinent aspects of every water supply and sewerage scheme in the State;

(i) To operate, run and maintain any water works and sewerage system, if and when directed by the State Government, on such terms and conditions and for such period as may be specified by the State Government;

(j) To assess the requirements for manpower and training in relation to water supply and sewerage services in the State;

(k) To carry out applied research for efficient discharge of the duties and functions of the Board;

(l) To perform such of the duties and functions, which are being performed by the Gujarat Public Health Engineering Services, as may be entrusted to it by the State Government.”

4. In that context, the Tribunal was of the view that GWSSB discharged an important duty and responsibility of providing drinking water to the people, industries, etc. The Board was constituted mainly to supply drinking water and maintenance of sewerage system. The usage charges recovered by the Board from Gram Panchayats, Nagar Palikas and Nagar Panchayats are at highly subsidized rates and therefore, cannot be considered as an industry in the sense that the said word is used in the definition of taxable entry. The Board was sustaining on the grants released by the State Government. It was therefore concluded that the pipelines were not laid to facilitate any commercial or industrial activity.

5. We are broadly in agreement with the view of the Tribunal. The Tribunal noted the purpose for which the Board was constituted and its nature of activities. The pipelines constructed were for providing drinking water facilities to the people of

the State through different Gram and Taluka Panchayats. Only a small portion of the water was provided to the industries at commercial rates.

6. *In the result, no question of law arises. Tax Appeal is dismissed."*

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4.1 *In view of the above judgments, particularly the Hon'ble jurisdictional High Court of Gujarat in the case of BMS project Pvt. Ltd. (Supra) as of now it is settled that service of laying of pipeline for Gujarat Water Supply & Sewerage Board (GWSSB) is not falling under the service of industrial or commercial construction service. In the grounds of revenue's appeal with reference of these judgments, it is submitted that these judgments have been appealed against. However, since no adverse judgments has been delivered against the aforesaid judgment and no stay has been granted the judgment cited (Supra) have binding effect*

5. *Accordingly, following the above judgments, we are of the view that in the present case also since the appellant is not liable to pay the service tax they are legally entitled for the refund of service tax already paid. Therefore, we do not find any infirmity in the order of the Commissioner (Appeal). Hence, the same is upheld, Revenue's appeal is dismissed.*

14. As narrated above, I find that CESTAT Ahmedabad vide above order dated 17.11.2023 has held appellant is not liable to pay service tax as service of laying of pipeline for Gujarat Water Supply & Sewerage Board (GWSSB) is not falling under the service of industrial or commercial construction service. Further, I find that said order is squarely applicable to the fact of the present case. Accordingly, I find that CESTAT Ahmedabad has passed a categorical order in the present matter. Hence, I am of view that in present case said assessee is not liable to pay tax for providing and laying pipes for sewerage and drainage lines of AMC, AUDA and other government departments.

15. Further, I find that vide letter dated 08.02.2024 Shri Saileshbhai Jivanbhai Desai, son of Shri Jivanbhai Jorabhai Desai, Proprietor of M/s Visat Construction Co has submitted copy of Death Certificate No. D202110006376 dated 07.01.2021 of Shri Jivanbhai Jorabhai Desai and requested to abate the proceeding. Ongoing through copy of Form ST-1 available on records, I find that Visat Construction Co. is a proprietorship firm and Shri Shri Jivanbhai Jorabhai Desai is proprietor of said firm. Further, on perusal of Death Certificate No. D202110006376 dated 07.01.2021 issued by Amdavad Municipal Corporation, I find that Shri Jivanbhai Jorabhai Desai was expired on 04.01.2021. Further, said death certificate has been verified on website <https://eolakh.gujarat.gov.in> and same found genuine. Further, I find that CESTAT in Final Order No. A/11405/2022 dated 18.11.2022 in case of M/s Visat Construction Company has also abated appeal proceeding due to death of Shri Jivanbhai Jorabhai Desai, proprietor of said firm. Therefore, I find that the assessee to whom the department had issued SCNs(mentioned in Table 3 above) has expired on 04.01.2021 and is no more alive.

16. As far as the issue regarding the sustainability of demands where the assessee has expired concerned, I find that Hon'ble Supreme Court in the case of Shabina Abraham Vs Collector of Central Excise and Customs allowed the appeal on ground that there is no machinery provision in the Central Excise & Salt Act for continuing assessment proceedings against a dead individual. The first head note of the citation 2017 (50) S.T.R. 241 (S.C.) read as under:-

Demand - Continuation of - Against legal representatives/estate of sole proprietor/manufacturer after he is dead through natural causes - HELD : It was impermissible to continue such assessment proceedings - In definition of assessee in Section 4(3)(a) of Central Excise Act, 1944 as "means person who is liable to pay duty of Excise under this Act and includes his agent", (i) use of present tense indicates that person referred to can only be living person, and (ii) use of "means and includes" indicates that it was exhaustive, with no scope of reading anything into it - In absence of machinery provisions for proceeding against dead person's legal heirs, duty and other sums do not become "payable" to apply recovery provisions under Section 11 ibid - Situation was not similar to one where firm is dissolved as device to evade tax, as it cannot be said that individual proprietor, who died through natural causes, maneuvered his death to evade Excise duty - Plea that Section 11A ibid was machinery provision which must be construed to make it workable, rejected as there was no charge to Excise duty under main charging provision of dead person - Section 6 ibid does not say anything about how dead person's assessment is to continue after his death in respect of Excise duty that may have escaped assessment - Definition of "person" under Section 3(42) of General Clauses Act, 1897 was not applicable as it does not include legal representatives of deceased. [paras 17, 19, 25, 27, 28]

17. In light of above legal position, when the proprietor of the proprietorship firm expired, it is impermissible to continue such proceedings. In definition of assessee in section 65(7) of the Act as "means a person liable to pay the service tax and includes his agent". Use of present tense indicates that person referred to can only be living person and use of "means and includes" indicates that it was exhaustive, with no scope of reading anything into it. Thus, in absence of machinery provisions for proceedings against dead person's legal heirs, tax do not become payable.

18. The above citation pertains to Central Excise matters involving provisions of Section 11A of the Central Excise Act, 1944, however, the same is pari materia to the provisions of Section 73 of the Finance Act, 1994. Therefore, the above case-law is applicable to the present case.

19. I have also gone through the Final order No. A/6088512016-SM(BR), dated 6-7-2016 of the CESTAT, Regional bench, Chandigarh [Court No. I] in Appeal No. ST/60065/2016-SM in the case of M.K. ENTERPRISES Versus COMMISSIONER OF CENTRAL EXCISE, CHANDIGARH-I reported at 2016 (451 S.T.R. 141 (Tri. - Chan.)). I observe that in the said order, while holding that no proceedings are sustainable against the appellant the tribunal has held as under:-

'4. On careful consideration of the submissions made by the ld. Counsel for the appellant, I find that proprietor Sh. Mukesh Sharma of the appellant's

firm has passed away on 17-5-2013 and the said facts were brought by the ld. Counsel in the knowledge of the ld. Commissioner but the ld. Commissioner instead of deciding the issue on merits and to follow the judgment of Hon'ble Apex Court has observed as under :

"I have considered at length the records of the case and the submissions made in the appeal memorandum as well as during the personal hearing. The appellant has canvassed that the proceedings should abate on account of the death of the proprietor of the appellant firm. I note that the instant proceedings are not original proceedings but appellate proceedings. The liabilities were determined in the original proceedings. The Ld. Advocate has not adduced the statutory basis of claim for abatement of appeal proceedings. Accordingly, the claim and objection on such ground is vacated".

5. The above observations made by the ld. Commissioner (Appeals) has ignored the decision of the Hon'ble Apex Court in the case of Shabina Abraham (supra) which is against the judicial propriety and contrary to law laid down by the Hon'ble Apex Court. The ld. Commissioner (Appeals) had no respect to the decision of the higher forum which clearly shows that he has done a grave error of law.

6. Further, I find that the issue has already been settled in the Hon'ble Apex Court in the case of Shabina Abraham (supra) which has been followed by this Tribunal in the case of Sagar Engineering Works and Bharti Mulchand Cheeda (Supra) wherein this Tribunal has observed as under.

6. We find that the learned Commissioner was aware of the fact while passing the impugned order that the proprietor of M/s Canan Domestic Appliances had already expired on 12.11.2003 whereas the impugned order was passed on 29.09.2006. In fact this case was remanded by the Tribunal vide its order dated 15.02.2005 setting aside the order of the Commissioner of Central Excise and remanding the matter for de novo adjudication. Even at that time the proprietor was no more, but in spite of this, the learned Commissioner passed the impugned order against the dead person who was the sole proprietor of M/s Canan and Domestic Appliances, which is against the settled position of law as held by various decisions of the Tribunal cited above. We are of the considered opinion that once the factum of death of the sole proprietor has come to the knowledge of the learned commissioner, the learned commissioner should have dropped the proceedings rather than passing the impugned order, but he chose to pass the impugned order against the dead person, which is not sustainable in law.

7. Therefore, I hold that no proceedings are sustainable against the appellant in the light of the above judicial pronouncement. In these circumstances, the appeal filed by the appellant is disposed off with consequential relief, if any.

20. Further, I have also gone through the judgment of CESTAT, New Delhi in case of M/s J.S. Singh Engineering Contractor Versus Commissioner of CGST (Appeals) [2019 (7) TMI 1417-CESTAT, New Delhi] relied upon by the appellant wherein Hon'ble Tribunal vide Final Order Nos. 50933-50934/2019 dated 11.07.2019 held that:-

"11, Having considered the rival contentions, I hold that the issue of show cause notice in the name of deceased person under the provisions of Finance


ACT, 1994, is ab initio void in view of the ruling of the Hon'ble Supreme Court - in the case of Shabina Abraham (supra). Further, I find that there is no specific provision or machinery provision for recovery of tax dues, after death of the proprietor. In the facts and circumstances of the case, I hold that - Section 87(c) of the Finance Act, 1994 is not applicable. Accordingly, the appeals are allowed and the impugned orders are set aside".

21. I find that ratio of judgements of Hon'ble Supreme Court and CESTAT as discussed above are squarely applicable to the fact of the present case. Further, on perusal of the above referred orders of Hon'ble Supreme Court and CESTAT, other aspects of the case and considering that the said assessee is a proprietary form, I find that assessment proceedings against a deceased person are not lawful and proper. Therefore, Show Cause Notices No. (i) STC/04-20/O&A/13-14 dated 13.05.2014, (ii) STC/04-34/O&A/14-15 dated 07.10.2014, (iii) STC/04-38/O&A/15-16 dated 05.10.2015 and (iv) STC/04-39/O&A/Visat/16-17 dated 29.03.2017 issued in the name of the deceased person, late Shri Jivanbhai Jorabhai Desai is liable to vacated. As the said SCNs itself is vacated, the question of charging interest or imposing penalty does not arise.

22. In view of the foregoing discussion and findings, I pass the following order;

ORDER

- I. I hereby order to drop proceedings initiated against Shri Jivanbhai Jorabhai Desai, Proprietor of M/s Visat Construction Co vide Show Cause Notices No. (i) STC/04-20/O&A/13-14 dated 13.05.2014, (ii) STC/04-34/O&A/14-15 dated 07.10.2014, (iii) STC/04-38/O&A/15-16 dated 05.10.2015 and (iv) STC/04-39/O&A/Visat/16-17 dated 29.03.2017.


(Lokesh Damor)
Additional Commissioner
Central GST & Central Excise
Ahmedabad North

F.NO.STC/4-34/O&A/2014-15
By Regd. Post AD./Hand Delivery

Dated 20.02.2024

To
M/s Visat Construction Co.,
B-22, Sarvodya Society VI-I
Ghatlodiya, Ahmedabad

Copy to:

- 1 The Commissioner of CGST & C.Ex., Ahmedabad North.
- 2 The Deputy Commissioner Division-VII, Central Excise & CGST, Ahmedabad North.
- 3 The Superintendent, Range-III, Division-VII, Central Excise & CGST, Ahmedabad North
- ✓ 4 The Superintendent (System) CGST, Ahmedabad North for uploading on website.
- 5 Guard File.

