



आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क:  
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,

द्वितीय तल, जी एस टी भवन / 2<sup>nd</sup> Floor, GST Bhavan,  
रेस कोर्स रिंग रोड, / Race Course Ring Road,  
राजकोट / Rajkot - 360 001



संघर्षण उद्योग

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रजिस्टर्ड डाक ए. डी. द्वारा :-

क	अपील / काइन नम्बर / Appeal / File No. V2/275/BVR/2017	मूल आदेश नं / O.I.O No. BHV-EXCUS-000-JC-002-2017-18	दिनांक / Date 17/04/2017
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ख अपील आदेश संख्या (Order-In-Appeal No.):

**BHV-EXCUS-000-APP-148-2017-18**

आदेश का दिनांक / 27.02.2018 जारी करने की तारीख / 28.02.2018  
Date of Order: Date of issue:

कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /  
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot

ग अगर आयुक्त/संयुक्त आयुक्त/उपायुक्त/सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, राजकोट / जामनगर / गान्धीधाम/द्वारा उपरलिखित जारी मूल आदेश से उत्पन्न /  
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellants & Respondent :-**  
I.M's Pruthvi Builders 1 floor, Marketing Yard Gate No. 2, Near Sejal clinic, Kodinar, Dist: Gir Somnath

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/  
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अन्तर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अन्तर्गत निम्नलिखित जगह की जा सकती है। /

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-

(i) विशेष मूल्यांकन से सम्बन्धित सभी मामलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं. 2, आर. के. पुरम, नई दिल्ली, को की जानी चाहिए। /

The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.

(ii) उपरोक्त परिच्छेद 1(a) में बतलाया गया अपील के अलावा बीच सभी अपील सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (विस्टेट) की पश्चिम क्षेत्रीय पीठिक, द्वितीय तल, बहामली भवन, असारवा महमदाबाद-380016 को की जानी चाहिए। /

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपील न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अन्तर्गत निर्धारित फॉर्म नंबर एए-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा अथवा की सीमा और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति सार्वजनिक करे। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉर्ड बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टै ऑर्डर) के लिए आवंटन-पर के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

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.5000/-, Rs.10,000/- where amount of duty demanded/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.

(B) अपील न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अन्तर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की सीमा अथवा की सीमा और लगाया गया जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति सार्वजनिक करे। निर्धारित शुल्क का भुगतान, संबंधित अपील न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेकॉर्ड बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपील न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टै ऑर्डर) के लिए आवंटन-पर के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees. in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

(i) विल अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत देने की गयी अपील, सेवारत नियमवली, 1994, के नियम 9(2) एवं 9(2A) के तहत विधेयक प्रार S.T.-7 में की जा सकती एवं उसके साथ अपील, केन्द्रीय उत्पाद शुल्क अधिकांश अपील (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियां संलग्न की (जहाँ से एक प्रति प्रामाणिक होती चाहिए) और अपील द्वारा सहायक अपील अथवा अपील, केन्द्रीय उत्पाद शुल्क सेवारत, को अपील न्यायाधिकरण को आवेदन देने करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवारत अपील न्यायाधिकरण (सेवटेक) के प्रति अपील के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एच के अंतर्गत, जो की विल अधिनियम, 1994 की धारा 83 के अंतर्गत सेवारत को भी लागू की गई है, इस आदेश के प्रति अपील न्यायाधिकरण में अपील करने समय उत्पाद शुल्क/सेवा कर में 10 प्रतिशत (10%), जब मात्रा एवं नुर्माना विवादित है, या नुर्माना, जब केवल नुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपील देय राशि इस कोई बंधन से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवारत के अंतर्गत 'साम किरा गण शुल्क' में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत रकम
- (ii) सेवटेक जमा की गयी गयी राशि
- (iii) सेवटेक जमा विधेयकवली के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्राधान्य विल (सं. 2) अधिनियम 2014 के अंतर्गत से पूर्व किसी अपील न्यायाधिकरण के समक्ष विधेयकवली में स्वीकृत अपील एवं अपील को लागू नहीं होगी।

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

Under Central Excise and Service Tax, 'Duty Demanded' shall include :

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Central Credit taken;
- (iii) amount payable under Rule 6 of the Central Credit Rules

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(C) भारत सरकार को पुनरीक्षण आवेदन :  
Revision application to Government of India

इस आदेश की पुनरीक्षण शक्ति निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्राथम प्रांतिक के अंतर्गत अथवा अधि, भारत सरकार, पुनरीक्षण आवेदन इकाई, विल संसद, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद भवन, नई दिल्ली-110001, को किया जाए चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid.

(i) यदि माल के किसी नुकसान के मामले में, जहाँ नुकसान किसी माल को किसी बरखाने में अथवा गृह के परिवहन के दौरान या किसी अन्य बरखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह परिवहन के दौरान, या किसी भंडार गृह में या भंडारण में माल के परिवहन के दौरान, किसी बरखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs 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

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गयी केन्द्रीय उत्पाद शुल्क के छूट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) मुनिविधित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इमुटी सेक्टर इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गयी है और ऐसे आदेश जो अपील (अपील) के द्वारा विल अधिनियम (सं. 2), 1998 की धारा 109 के द्वारा नियत की गयी लॉच अथवा समारोह पर या बाद में पारित किए गये हैं। / 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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रार संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमवली, 2001, के नियम 9 के अंतर्गत निर्दिष्ट है, इस आदेश के संख्या के 3 महीने के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के लक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी 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 O.O. 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.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। / जहाँ संलग्न रकम एक लाख रुपये या उससे कम है तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 / का भुगतान किया जाए। / The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त इस में किया जाना चाहिए। इस लक्ष्य के होते हुए भी की लिखा गयी कपड़े से बचने के लिए पर्याप्त अपील न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.O. should be paid in the aforesaid manner, not withstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं अथवा आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट देना होगा। / One copy of application or O.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-1 in terms of the Court Fee Act, 1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवारत अपील न्यायाधिकरण (आय विधि) नियमवली, 1982 में वर्णित एवं अन्य संबंधित मामलों को परिभाषित करने वाले नियमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च अपील न्यायाधिकरण को अपील दर्जित करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपील न्यायाधिकरण वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in).

## ORDER IN APPEAL

M/s Pruthvi Builders, 1<sup>st</sup> Floor, Marketing Yard, Gate No.2, Nr. Sejal Clininc, Kodinar Dist:- Gir Somnath (*hereinafter referred to as "appellant"*) has filed present appeal against Order-in-Original No: BHV-EXCUS-000-JC-002-2017-18 dated 17.04.2017 (*hereinafter referred to as the "impugned order"*) passed by the Joint Commissioner, Central Excise, Bhavnagar (*hereinafter referred to as the "lower adjudicating authority"*).

2. Brief facts of the case are that the appellant was engaged in providing services under the different taxable categories specified under Finance Act, 1994 (*hereinafter referred to as "the Act"*) but were not paying service tax on the value of services provided by them. The investigation revealed that the appellant had provided services during the financial years 2013-14 to 2015-16 under the category of "Works Contract Service" to various Government Authorities and were not paying service tax. Show cause notice dated 21.10. 2016 demanding service tax of Rs.1,09,44,493/- under proviso to Section 73 (1) of the Act. Show Cause Notice was decided by the Adjudicating Authority vide impugned order wherein service tax demand of Rs.1,06,29,588/- was confirmed under Section 73 of the Finance Act, 1994 alongwith interest under Section 75 of the Act and imposing penalties under Section 77(2) and Section 78 of the Act.

3. Being aggrieved with the impugned order, the appellant preferred the present appeal contending that:

(i) The Appellant have executed works contracts received from the local authorities, education institutions, and governmental authorities like Gujarat Council of Elementary Education; Agricultural Produce Market Committee (*hereinafter referred to as "APMC"*) ,Kodinar Nagarpalika, Una Nagapalika and Road & Building Department of Junagadh District Junagadh; that none of these service receiver has utilized the services for commercial activities; that they are submitting details of services and service tax calculation as per Annexure 'F'; that services provided by them are exempted under Notification No.25/2012-St dated 20.06.2012 (*hereinafter referred to as "the said notification"*) till 28.02.2016.

(ii) The amount of service tax due in respect of works carried out for

Junagadh Agricultural University(JAU) has already been deposited by the appellant though service tax has not been received by the appellant from the JAU and hence considering the bonafide of the Appellant No penalty was imposable; that JAU is admittedly Educational institution not engaged in any commerce, industry or business or profession; that civil construction works for JAU was in the nature of Civil Structures and pre-dominantly for use other than for commerce; that exemption scheme has undergone change with effect from March, 2016 and appellant was not aware of the said change; that negotiation and LOI for the works of JAU were done prior to 01.03.2016 i.e. before the change in the provisions; that appellant made efforts to recover the service tax payment from the JAU which was not accepted by them; that therefore inspite of non recovery of service tax from the JAU they have paid the dues; that they submit copies letters issued to JAU for such liability; that JAU refuses to bear the incidence of service tax till date; that this establishes their bonafide belief that services were exempted and no service tax was payable by them; that invocation of larger period and penalty under section 78 is not justifiable.

(iii) The work contract services was provided to APMC Veraval during 2013-14 to 2015-16 towards construction of shop cum Godown, paver block floorings well as office building under Work order NO.84/2014-15 dated 25.12.2014; that appellant was under bonafide impression that payment of service tax was exempted and hence not paid by them; that APMC is a committee constituted under the provisions of the Gujarat Agricultural Produce Market Act, 1963 with the objective of regulating marketing of agriculture produce; that the provisions of this act clearly laydown that APMC is in the nature of governmental authority and all notified agricultural commodities are legally required to be bought to the market yard of such APMC for being sold ; that it is not in dispute that APMC Veraval is a Governmental Authority; that market fees and license fees collected by APMC would not alter the public function carried out by the APMC; that charging such amounts from the farmers or agriculturists would not render the public function and activities of APMC to be 'Commerce' and "business"; that

(iv) Construction Services for construction of Vendor Market and Fish Market are provided to the Kodinar Nagar Palika and Una Nagar Palika which are Local authorities in the nature of Self Governing Bodies and not indulged in Trade or business activity though trade or commercial activities

are carried out at Vendor Market or Fish Market; that the services rendered by Appellant to Nagarpalikas and not to the general public; that both Nagarpalikas are Self government bodies as contemplated under the constitution of India and hence exempted from payment of service tax ;that CBEC vide Circular No. 80/10/2004-ST dated 17.09.2004 clarified that generally government buildings or civil constructions were used for residential, office purposes or for providing civic amenities and such constructions would not be taxable unless they were for commercial purposes like local Government bodies getting shops constructed for letting them out; Appellant referred case law reported as 2013 (29) STR 391 in respect of M/s. East Coast Construction & Industries; that it was their bonafide belief that no service tax was payable by them being service provided to these Palikas and hence extended period can not be invoked in their case and No penalty was imposable under Section 78 of the Act.

(iv) The construction services for Gujarat Council of Elementary Education were exempt from payment of service tax because the Council is a body constituted for imparting education and the construction services were also for class rooms and school infrastructure; that work orders issued by the Council reveals that the constructions were for class room and upgradation of school infrastructure and hence no further documentary evidence was required to establish the nature of the construction.

(v) The Road and building department of Junagadh District is a department of the State Government and therefore any construction service rendered in favour of such Government Department was exempt from payment of duty; adjudicating authority has nowhere held that the Appellant was liable to pay service tax for services provided to the R & B Department, which is a clear error on his part. Similarly the Commissionerate of Health, Gandhinagar is also a Government department, and therefore any construction service rendered in favour of such government department would not attract liability of service tax; that work order issued for works of R & B Department as well as the Commissionerate of Health by the Chief Engineers of the State of Gujarat and therefore it was an admitted fact that the appellant has executed the works for the state government department; that Appellant executed work of construction of Helipad, construction of quarters for Deputy Collector as well as the judicial officers of the state government, levelling work of ground for Mahila Sammelan, Aluminum Section of window at Una Court Building at Una and other such works for

various government Departments.

(vi) Demand of service tax was wholly time -barred as no ground or reason is given by the Joint Commissioner for upholding invocation of the larger period of limitation. Appellant relied upon the Hon'ble Supreme Court's decisions in the case of M/s. HMM Ltd- 1995(76)ELT 497 (SC), M/s. Cosmic Dyes Chemical- 1995 (75) ELT 721 (SC) and M/s. Rajbahadur Narayansingh Sugar Mills Ltd – 1996 (88) ELT 24 (SC) to submit that the Revenue must show as to which of the elements the assessee was guilty of to invoke larger period of limitation; that balance sheet being public document any demand raised on the basis of information appearing in the balance-sheet after invoking extended period of limitation was illegal because the allegation of suppression of facts cannot be mad when same information was appearing in a public document like the balance-sheet of the asseesee. Appellant relied upon the decision of Hon'ble CESTAT in the cases of M/s. Hindalco reported as 2003(161) ELT 346, M/s. Kirloskar Oil Engines Ltd- 2004(178)ELT 998 and M/s. Martin & Hariss Lab Ltd [2005(185)ELT 421; that case of willful misstatement or suppression of facts would have been there if information called for is given wrongly or not disclosed to the authority which is not the case in the matter; that Appellant relied upon the decisions of Hon'ble Supreme Court in the case of M/s. Padmini Products and M/s. Chemphar Drugs reported as 1989(43) ELT 195(SC) and 1989 ELT 276 (SC).

(vii) No interest under Section 75 was payable by them as there is no short payment of service tax in their case; that No penalty was imposable upon them as there was clear doubt about service tax liability on part of the appellant; that it was not a mandatory condition that an adjudicating authority has to impose penalty equal to the amount of service tax confirmed; that no penalty could have been imposed in view of the Section 80 of the Act; that matter of penalty is governed by the principles as laid down by the Hon'ble Supreme Court in the case of M/s. Hindustan Steel Limited reported as 1978 ELT(J159); that No simultaneous penalty under Section 77(2) can be imposed for same offence.

4. Personal hearing in the matter was attended by Shri Amal Dave Advocate and Shri Aditya Tripathi Advocate on behalf of the Appellant. Shri Tripathi reiterated the grounds of Appeal and submitted that extended period is not applicable and demand is time barred; that APMC does not engage

itself in commercial activity and hence no service tax was payable ; that APMC is Government undertaking that CESTAT in various cases have held that APMC is constituted for charitable purpose and no service tax is payable for construction services provided to them; that construction services provided to university is not taxable.

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## FINDINGS

5. I have gone through the facts of the case, impugned order, appeal memorandum and written as well as oral submissions made by the Appellant. The issue to be decided in the matter is whether services provided to various government agency by the Appellant are exempted under the Notification 25/2012-ST dated 20.06.2012 or not.

6 I find that Notification No. 25/2012-ST dated 20.06.2012 was amended by Notification 06/2015-STR dated 01.03.2015 wherein items (a) (c) (f) of Entry Sr No.12 was omitted with effect from 01.04.2015. Relevant portion of the notification reads as under:-

*"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 -*

**[\*(omitted w.e.f. 01.04.2015) \***

**(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;**

**]**

**(b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);**

**[\*(omitted w.e.f. 01.04.2015)**

**\*(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; ]**

**(d) canal, dam or other irrigation works;**

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

**[\*(omitted w.e.f. 01.04.2015)**

**\*(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the said Act.]**

6.1 I further find that Entry No.12A is inserted by Notification 9/2016-ST dated 01.03.2016 which reads as under:-

(iv) after entry 12, with effect from the 1st March, 2016, the following entry shall be inserted, namely -

"12A. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or

(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act.

under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date :

*provided that nothing contained in this entry shall apply on or after the 1st April, 2020."*

6.2 Simultaneous reading of above provisions stipulates that exemption covered under clause (a), (c) and (f) at Sr No.12 of the said notification was withdrawn with effect from 01.04.2015 except where contract has been entered into prior to the 1<sup>st</sup> March, 2015 where appropriate Stamp Duty had been paid. I find that it is not in dispute in respect of Agreements and Contracts entered into with Junagarh Agricultural University were entered into after 01.03.2015, therefore, taxability and liability of the Appellant is not in dispute.

6.3 The Appellant has contested services provided to APMC Veraval in respect of "Construction of RCC Road and Construction of Shops cum Godown, Paver Block Flooring" as per Work Order No.84/2014-15 dated 25.12.2014. I find that adjudicating authority at Para 3.4.3. has discussed the matter and observed that there is no mention, in the work order, of construction of RCC Road and confirmed the service tax demand on construction of Shops cum Godown, paver block flooring and office Building. I find the Appellant has not come out with any documentary evidence to show that how APMC is government authority and how Shops and Godown was not meant for Commercial Activities!! I find that the adjudicating authority at Para 3.4.3 has observed that APMC is not a Government Authority and not set up with 90% or more participation by way of equity or control of the Government. I find that appellant has not come up with any evidence to counter the observations of the Adjudicating Authority. The Appellant has argued that APMC does statutory function and is in the nature



of local authority or a Governmental Authority and constituted for regulating marketing of agricultural commodities and hence its functions are other than commerce, industry or business. I find that Notification 25/2012 -ST dated 20.06.2012 refers exemption only for Government Authority carrying out functions entrusted to municipality entrusted under Article 243W of the Constitution. I find no reasoning advanced by the Appellant to justify that activities of APMC are covered under Article 243W of the constitution. I find that facilitation of marketing activities by APMC is for the furtherance of course of farmer's business and commerce and does not cover the functions entrusted to municipality under Article 243W of the constitution. The condition stipulated in the notification is in respect of functions entrusted under Article 243 W which have to be for the purposes other than commerce or industry and hence the Appellants relying on the Hon'ble CESTAT's decision in the case of M/s. A B Projects P Ltd reported as 2017(5) GSTL 195 (Tri-Mumbai) is not correct. I find that the said decision can not be made applicable in the present case as the matter in said decision was pertaining to the period prior to 01.06.2007 and no issue relating to exemption under Notification 25/2012-ST dated 20.06.2012 was discussed in that case. Similarly, services provided to APMC Kodinar for construction of office building, gown, compound wall etc does not fall under the purview of exemption Notification 25/2012-ST dated 20.06.2012. I am therefore of the considered view that Appellant is liable to pay service tax on the services provided to APMC.

6.4. Appellant has also contested the service tax liability on services provided towards construction of Fish Market and Vendor Market to Una Nagarpalika (work order dated 12.01.2015) and Kodinar Nagarpalika (work order dated 20.02.2015) on the grounds that these being local authority not engaged in commercial activity I find that the appellant has not produced any evidence to prove that the said complexes were for the purpose of sovereign/ public use having no commercial consideration in it by the service receiver. Mere fact that, the service recipient is an government institute, itself does not automatically or by default come out of ambit of tax liability. The appellant has not come up with any legal backing or any explicit provision which grants exemption from payment of service tax when services provided to such an institute. As discussed in foregoing para exemption is available when services are provided in respect of functions entrusted to Municipality under Twelfth Schedule of Article 243W. The adjudicating authority in his order rightly observed that the intended purpose

of vendor market as well as of fish market is commercial. I also find that CBEC vide circular No. 80/10/2004-ST dated 17.09.2004 has explained that if constructions are for commercial purposes, such activity would be commercial and builder would be subject to service tax. Relevant portion is reproduced below:-

*"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 non-commercial 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."*

**(Emphasis supplied)**

6.5 The appellant has not produced any counter evidence to prove that Markets constructed by them are not exploited as market and are only facilitation points at large provided by the Nagarpalikas. Therefore, I do not find any infirmity in the adjudicating authority's decision on this ground.

7. I find that adjudicating authority has confirmed demand of service tax on the services provided by the Appellant in respect of (i) Construction of Garden and Compound wall to the Una Nagapalika (work order dated 03.03.2015 (ii) work relating to maintenance and repairs of Public Health Centre(PHC) and Community Health Centre (CHC) (iii) Construction of Helipads (iv) Construction of Residential Quarters (iv) Ground Levelling Work (v) Aluminum Section of Window at Una Court Building (vi) Repairing work of Mamlatdar Office at Una & Kodinar on the grounds that work orders are issued after 01.03.2015 and exemption was not available under Clause 12(a) or Clause 12A of the Notification. I find that entry Sr No.12 (a) of Notification 25/2012 -ST dated 20.06.2012 provides exemption to services provided to government, government authority and local self government, in relation to a historical monument, archaeological site etc, canal/dam/irrigation work or pipeline etc . Entry Sr No.12 is reproduced for the sake of convenience:-

"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)\*
- (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
- (c)\*
- (d) canal, dam or other irrigation works;
- (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
- (f)\*

(\* omitted w.e.f.1.4.2015)

7.1 I find that appellant has not disputed the adjudicating authority's findings that exemption are not covered under Entry Sr No.12A as no contracts/ agreement are entered into by them prior to 01.03.2015. The Appellant has argued that they have provided services to the state government department, however, not explained that how exemption is available to the specific services provided by them. I find that the services provided by the appellant to various authorities are not covered under clause (b), (d) or (e) of entry Sr No.12 as discussed above and therefore I do not find merit in the appeal made by the Appellant. I, therefore hold that Appellant is liable to pay service tax on the services provided by them being not covered under the entry No.12 of the Exemption Notification No.25/2012-ST dated 20.06.2012.

8. The Appellant has submitted that the service of construction of Classrooms provided to Gujarat Council of Elementary Education is exempted as the Council is a body constituted for imparting education, and no further evidence is required to establish the nature of construction. I find Appellant failed to justify how services are exempted under Notification 25/2012-ST dated 20.06.2012 as discussed in Para above

9. Appellant has contested imposition of penalty under Section 78 of the Act in respect of service tax demand towards services provided to Junagadh Agricultural University. It is argued that exemption was withdrawn on 01.03.2015 as against their work order dated 20.03.2015 and agreement made on stamp paper on 09.03.2015. I find that the appellant has paid

service tax and contested imposition of penalty on the ground that though the Agreement dated 09.03.2015 and Work Order is dated 20.03.2015, LOI and negotiations were being done prior to such amendment. In this regard I am of the view that Notification had already been issued on 01.03.2015 prior to their agreement dated 09.03.2015 and work order dated 20.03.2015. The appellant is required to follow the self-assessment procedure after March and was to pay service tax in April, 2015 or much thereafter. They are required to know the relevant provisions prevailing at the time of legal undertaking and subsequent self assessment of service tax. The appellant was undertaking numerous activities in big way and now cannot hide behind the reason that they were unaware of the provisions. I find that Partner of the Appellant whose statement has been recorded is also Holding Diploma in Civil Engineer and is well versed with the provisions of law. I find that the agreement is made after the period of 10 days from issuance of notification and work order is accepted by the Appellant after 20 days of the Notification. It is not the case that Appellant has not accepted the work order or refused to challenge the agreement in the event of change of provisions. Acceptance of work order implies that the price is accepted by the Appellant after the new provisions came into effect. I, therefore, do not find any merit in Appellant's submission that no penalty was imposable in respect of services provided to Junagadh Agricultural University with effect from 01.04.2015 where agreement is entered into after 1.3.2015.

9.1. The Appellant has contested invocation of larger period and imposition of penalty under Section 78 on the ground that the Balance Sheet is a public document and Audit of the unit was being carried out by the department and hence there was no case of suppression of facts with malafide intent on their part. As discussed in foregoing para that the provisions were notified on 01.03.2015 and they signed agreement on 09.03.2015 and work order was finalized on 20.03.2015, however, the appellant continued provisioning of services and (without charging service tax) in 2015-16 also and had not pay service tax in F.Y.2015-16. It is highly unacceptable and beyond logic to believe that the department will read balance sheet of each and every assessee even though their Balance Sheet where information is shown by the assessee in Balance sheet not provided by the assessee to know non-payment of service tax. The appellant has also contended that extended period of five years cannot be invoked in their case as there was no malafide at their end as they believed that they were not liable to pay service tax and also because no tax was recovered by them

from the service receiver. I do not find any merits in the contention of the appellant. Merely because they have not collected service tax on the presumption basis, it can not and does not justify their bona fide. Ignorance of law can not be made base for the purpose especially when the appellant is undertaking huge chunk of government work orders valuing in crores of rupees translating into well established business entity for long period of time. Further it is not the case that the same was intimated to the department in any manner. Had the department not initiated the investigation, non payment would not have been detected and revenue loss to exchequer was at stake. Hence, the Department was justified in invoking extended period of limitation.

9.2 In light of the above, I hold that extended period of limitation was rightly invoked and this act of suppression of facts and non payment of service tax with intent to evade rendered Appellant liable for imposition of penalty under Section 78 of the Act and hence penalty imposed in the impugned order is justified. I therefore, upheld the imposition of penalty under Section 78.

10. As regard imposition of penalty under Section 77 of the Act, the appellant pleaded that they are not liable to penalty under Section 77 of the Act. I find that it is a fact that the appellant has wrongly assessed the service provided by them resulted in short payment of service tax and contravention of provisions of the Act. Adjudicating authority, while imposing penalty also recorded that Appellant failed to file correct ST-3 Returns while imposing penalty of Rs. 10,000/- under Section 77 of the Act. I therefore hold that penalty imposed under Section 77 in the impugned order is correct, legal and proper.

10.1 As regard waiver of penalty under Section 80, a bare reading of this provision would show that the onus is upon the appellant to prove "reasonable cause" for this failure. The appellant has not shown that there was any reasonable cause, which occasioned them to make non payments of service tax. The turnover of the appellant is substantial and even if they had any doubt regarding the levy of service tax, they could have and should have inquired from the department, which was not done in the instant case. The appellant had suppressed the vital fact of providing taxable services right from the beginning with intent to evade the payment of tax. Therefore, I

hold that the benefit of Section 80 of the Finance Act, 1994 is not extendable to them. As discussed, ignorance of law and presumption of non taxability can not come to their rescue. I rely on the Order passed by the Hon'ble CESTAT, Chennai, in the case of TVS Motor Co. Ltd. reported in 2012 (28) S.T.R. 127 (Tri. - Chennai), held as under:


*"13. So far as ground of no penalty advanced by learned counsel is concerned there is nothing on record to show that the appellant avoided its liability bona fide when it is an established business concern with vast experience in application of provisions of Finance Act, 1994. Its returns did not disclose bona fide omission. Rather facts suggest that knowable breach of law made the appellant to suffer adjudication. Accordingly, no immunity from penalty is possible to be granted on the plea of tax compliances made which was found to be a case no payment of tax on the impugned services provided during the relevant period."*

10.2 Considering above facts of this case, I hold that the present case does not merit invocation of provisions of Section 80. I, therefore reject the request of the appellant as devoid of merits

11. In view of the foregoing discussions and findings, I reject the Appeal filed by the Appellant and uphold the impugned order.

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

11. The appeal filed by the Appellant stands disposed off in above terms

  
(कुमार संतोष)  
आयुक्त (अपील्स)

By R.P.A.D.

To

M/s Pruthvi Builders, 1 <sup>st</sup> Floor, Marketing Yard, Gate No.2, Nr. Sejal Clininc, Kodinar Dist:- Gir Somnath	मेसर्स पृथ्वी बिल्डर्स पहली मंजिल मार्केटिंग यार्ड, गेट नं २ सेजल क्लीनिक के पास, कोडिनार जिल्ला-गिर सोमनाथ
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Copy to:-

1. The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
2. The Commissioner, GST & Central Excise, Bhavnagar Commissionerate, Bhavnagar.
3. The Assistant Commissioner, GST & C Excise Division, Junagadh.
4. Guard File.