



इन्दौर नगर, श्री कांठ रोड पर: 2/F, 1st, GST Block
आर.के.एस. रोड - State Court Ring Road

आवृत्ति 21/03/2019 - 31/03/19

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संश्लेषण प्रमाण की तालिका :-

क	आपिल-वस्तु एवं सेवा कर Appeals - VAT 12001/2019-20	सूचना संख्या :- HVT No. BBV-FXCU-000-APP-075-2019	दिनांक :- Date: 30-11-2017
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ख वस्तु एवं सेवा कर (Appeals) Form No.1

BHV-FXCUS-000-APP-075-2019

आपिल का दिनांक :-
Date of issue: 06.11.2019 जारी करने की तारीख :-
Date of issue: 11.03.2019

कुमार संतोष भू - आयुक्त (अपील), राजकांठ ज़िला कार्यालय :-
Passed by Shri Kumar Santosh, Principal Commissioner (Appeals), Rajkot

ग वस्तु एवं सेवा कर (अपील) आदेशों में वस्तु एवं सेवा कर, केन्द्रीय उत्पाद शुल्क एवं सेवा कर, वस्तु एवं सेवा कर, राजकांठ ज़िला कार्यालय में प्रस्तुत किया गया।
शुद्ध अर्थ में प्रस्तुत किया गया।
आदेश का अर्थ स्पष्ट करने के लिए प्रस्तुत किया गया।
आदेश का अर्थ स्पष्ट करने के लिए प्रस्तुत किया गया।

घ अपीलकर्ता & जवाबदारों का नाम एवं पता (Name & Address of the Appellants & Respondent) :-
K.V. Baria, 134, Jai Ekam, Marketing yard, Rajkot.

व आदेशों को अपील करने के लिए प्रस्तुत किया गया है। आपिल का अर्थ स्पष्ट करने के लिए प्रस्तुत किया गया है।
आदेश का अर्थ स्पष्ट करने के लिए प्रस्तुत किया गया है।

॥ वस्तु एवं सेवा कर (अपील) आदेशों में वस्तु एवं सेवा कर, केन्द्रीय उत्पाद शुल्क एवं सेवा कर, वस्तु एवं सेवा कर, राजकांठ ज़िला कार्यालय में प्रस्तुत किया गया।
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∴ ORDER-IN-APPEAL ∴

M/s K.V. Barad, Kodinar (hereinafter referred to as 'Appellant') filed Appeal No. V2/523/BVR/2017 against Order-in-Original No. BHV EXCUS OMD IC-35-2017-19 dated 30.11.2017 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST & Central Excise, Bhavnagar (hereinafter referred to as 'lower adjudicating authority').

7. The brief facts of the case are that the Appellant, holding Service Tax Registration No. AACFK2974RSD002 under the category of 'Works Contract Service', was providing 'Works Contract Service' but was not paying Service Tax and hence, detailed inquiry was initiated against them. The inquiry revealed that the Appellant had rendered the following services under Works Contract but did not pay Service Tax-

- (i) Construction service provided to Agriculture Produce Market Committee, Veraval for construction work of RCC covered shed, Grain Drying room & RCC ESR primarily for the use of agriculturalists.
- (ii) Construction service provided to M/s Gujarat Ambuja Cement Ltd for improvement and development of National Highway Road and plant approach road with bitumen work for Road to Port, services of laying semi dense bitumen carpet and bitumen patch, Road re-carpeting job, Road repairing job from front gate to NH etc.
- (iii) Construction service provided to Somnath Kalyani Mandal, Kodinar for construction of school building.
- (iv) Construction service provided to Gujarat Energy Transmission Corporation Ltd (GETCO) for construction of C.R. Building, Foundation Cable Trench, Compound Wall, Road Staff Quarters etc.
- (v) Construction service provided to Gujarat Council of Elementary Education for construction of classrooms in various primary schools.
- (vi) Construction service provided to M/s Kellan Construction Ltd, Rajkot for widening and strengthening of Veraval Sutrapada Road.
- (vii) Service provided to M/s Paver Industrial and Construction Corporation for transportation of goods.
- (viii) Construction service provided to M/s Raj Trishul Construction Co. Pvt Ltd as a sub-contractor for construction of bridge.
- (ix) Construction service provided to Municipal Council, Diu & P.W.D. Diu for various construction activities.

2.1 Show Cause Notice No. V2/523/BVR-SI/2017-19 dated 5.5.2017 was issued to the Appellant calling them to show cause as to why Service Tax of Rs.



Rs. 66,98,855/- for the period from 2011-12 to 2015-16 should not be recovered from them under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'Act') along with interest under Section 75 and also proposing imposition of penalty under Sections 77, 78 of the Act and penalty under Rule 70 of Service Tax Rules, 1994 (hereinafter referred to as 'Rules').

2.2 The Show Cause Notice was adjudicated vide the impugned order which confirmed demand of Service Tax of Rs. 66,98,855/- under Section 73(1) and ordered for its recovery along with interest under Section 75 of the Act and imposed penalty of Rs. 66,98,855/- under Section 78 of the Act Rs. 10,000/- under Section 77(2) of the Act and late fee of Rs. 13,400/- under Rule 70 of Rules for late filing of ST-3 Returns.

3. Being aggrieved with the impugned order, the Appellant has preferred appeal, inter-alia, on the following grounds:-

(1) The period during which the appellant executed works contracts for APMC, Veraval is prior to amendment of the exemption Scheme No. D1-E3-2276, and therefore payment from service tax was exempted if the client was in the nature of the Government or a local authority or a governmental authority for whom the service was rendered in respect of a structure meant predominantly for use other than for commerce, industry or business. 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. The provisions of this Act clearly lay down that an APMC is in the nature of a governmental authority, and all notified agricultural commodities are legally required to be bought to the market yard of such APMC for being sold. The show cause notice and the impugned order has raised any dispute about the nature of APMC, Veraval as a Governmental Authority, but it is alleged that the Committee was engaged in commerce and business because it collected market fees, because the main source of income of the APMC was license fees and market fees, and also because the functions carried out by such APMC at the market yard were not those that were enumerated under article 243W of the Constitution of India. But all these reasons are incorrect and unsustainable because an APMC is undoubtedly "Governmental authority", and collecting "license fee" or "market fee" would not alter the public function carried out by the APMC and charging such amounts from the farmers or agriculturists whose goods are bought and sold at the market yard of APMC would not render the Public function and activities of the APMC to be "commerce" and "business". The Statute lays down that notified agricultural commodities can be bought and sold only at the market yard under the APMC, and thus the control or regulatory



function of APMC is not only a statutory function but is also in the nature of local authority or a Governmental Authority specifically constituted for regulation of marketing of agricultural produce. A Committee obviously requires funds for carrying out its functions and therefore certain amounts as "license fee" and "market fee" are collected by the Committee, but such amounts are collected only from the farmers and agriculturists who participate in buying and selling their commodities and produce at the market yards managed and maintained by the APMC. Only because license fee and market fee are thus collected by the APMC from the farmers and agriculturists, the functions of the Committee could not be held to be activities of commerce and business because the APMC is not constituted under the said Act for any commerce or business. The exemption under Sec. 12 of notification no. 23/2012-ST was therefore admissible to the appellant for providing works contract services in favor of APMC, Morava and relied upon case laws of APMC-2014(36) ST R 382, (ii) A.B. Projects Pvt Ltd-2017 (5) GS L 195 (ii) Santeev K. Gaddamwar- 2017 (5) GS L 706. Therefore, the demand of service tax for such works is therefore illegal and without jurisdiction.

(ii) The appellant provided construction / maintenance services to M/s. Ambuja Cement Ltd. for improvement and development of national highway road and junction in between Corridor road entry and plant approach road for road to port, laying of bitumen concrete / patch on road from D Block to Chhachhar canaway junction or Sugala mines road, laying of bituminous concrete from Ambuja Gate to Gajmruja Gate and lastly laying of bituminous concrete from front gate to national highway junction. The Adjudicating Authority erroneously proceeded on the wrong presumption that the said work relates to maintenance and development of a private road when in fact it was related to public road. The said roads and junction are in fact public roads regularly used by M/s. Ambuja Cement Ltd. as well as by general public. However, to ensure smooth movement of trucks and vehicles carrying the minerals from and to the factory of M/s. Ambuja Cement Ltd. the said cement company has taken it upon itself to maintain and develop these roads and junction. Merely because these roads and junction was maintained and development work was engaged by M/s. Ambuja Cement Ltd., would not deem the said roads to be private roads. As a matter of fact, the said roads / junction are used by public and are open to public access. Moreover, the department has not brought on record any evidence to show that the said roads in question were private property of Ambuja Cement and that the road in question fell within boundary of the M/s. Ambuja Cement Ltd. and thus, the Adjudicating authority has clearly erred in demanding service tax for services provided in respect of roads which are public road.



(iii) The lower adjudicating authority erred in finding that the Appellant is not eligible for exemption in respect of services given to M/s Raj Trishul Construction as a sub-contractor for construction of Dandi Bridge, in respect of the aforesaid transaction, the true facts are that the appellant has undertaken services of construction of Dandi Bridge. Dandi Bridge is located at Kudinar and is used by general public for crossing Dandi river. The nature of construction work undertaken by the Appellant cannot be disputed. Therefore, in view of Sr. No. 13 of the Mega Exemption Notification, it is clear that construction services in respect of bridge for used by general public is exempted from levy of service tax. No allegation has been made in the show cause notice to say or suggest that said bridge is not open to public and bridge intended only for provided use. Also the appellant has produced copies of relevant work orders from M/s Raj Trishul and the same have not been considered by the adjudicating authority.

(iv) The lower adjudicating authority observed that the Appellant rendered services to M/s Ketan construction for ordering and strengthening of Veraval-Sutrapada Road as sub-contractor however, nature of service provided by them is not clear since the Appellant did not provide copy of sub-contract agreement, and invoices and held that amount received by them was not on account of construction of road and hence, exemption under 13(a) of Notification No. 25/2012-ST dated 20.6.2012 is not available to the Appellant. On the other hand, the Appellant has argued that the reasoning given by the lower adjudicating authority is based merely on assumptions and presumptions inasmuch as a copy of the work order dated 28.05.2009 has already been provided during the adjudication proceedings. The true factual matrix is that the activity was undertaken by the appellant as construction services for widening and strengthening of Veraval to Sutrapada Road. As in the case of M/s. Ambuja Cement Ltd. and M/s. Raj Trishul, the said road is open to general public and not our private road and therefore, no service tax is payable on the construction activities relating to such public roads. Even with respect to these activities, no allegation much less any evidence has been brought on record by the department to suggest that the aforesaid road is not public road and the nature demand has been confirmed on mere presumption and assumption and without any basis.

(v) The Adjudicating authority observed that the services provided by the Appellant to M/s River Industrial Construction corporation for building public roads in Kudinar Taluka is not eligible to exemption since the appellant is not able to prove the nature of services. The Adjudicating authority has failed to

consider the work orders presented by the appellant, which prove the nature of the work and that it is exempt from service tax. Therefore the impugned order needs to be set aside.

(vi) It is submitted that Somnath Kalyani Mandal is admittedly an Institution which is not engaged in commerce, industry or business or profession. The Civil construction work for Somnath Kalyani Mandal, Kutch was admittedly in the nature of civil structures and the like meant predominantly for use other than for commerce, and therefore such services were exempted for last several years by virtue of the notifications issued by the Central Government. However, the Government has restricted above exemption for cases where a contract had been entered into prior to 01.3.2015 and applicable stamp duty on such contract had also been paid prior to such date. The appellant was not aware about this change in the Exemption Scheme and was under bonafide impression that such activities were not taxable, and therefore no service tax has been charged or collected by the appellant. In such circumstances, it cannot be said that the Appellant had evaded payment of service tax, and therefore, demand for the aforesaid transaction for the extended period of limitation is wholly illegal and without jurisdiction in the facts of the IAS case.

(vii) The lower adjudicating authority erroneously held that the Appellant rendered construction services to GETCO and not relating to transmission of electricity and that GETCO is commercially engaged in transmission of electricity. The appellant pleaded that they had not charged or collected service tax from GETCO as the income generated by them from taxable services during that relevant period was much below the small scale exemption limit. Further, at later stage the Appellant vide Challan dated 19.2.2014 discharged the service tax liability. However, the lower adjudicating authority had not considered their submission and confirmed service tax liability again, making it duplicate demand. Therefore, the impugned order is required to be set aside.

(viii) The lower adjudicating authority held that services provided by the appellant to CCEs is not eligible to exemption, since the said exemption was withdrawn vide Notification No. 6/2015-ST dated 1.03.2015 with effect from 1.4.2015. The Appellant has contended that construction services rendered to Gujarat Council of Elementary Education are exempt from payment of service tax because the Council is a body constituted for imparting education and services were rendered for the construction of new rooms and school infrastructure and such activities were exempted for the last several years by virtue of the notifications issued by the Central Government.

(ix) The adjudicating authority erred in providing extended period of limitation and imposing penalty under Section 78 of the Act. They rendered services to Government/ educational institutions who are not engaged in any commerce, industry or business and hence exempted from payment of service tax. Only because the Department entertained a different view about the liability of the transactions, invocation of larger period of limitation is erroneous. The impugned order is therefore liable to be set aside.

3.1 In Personal Hearing, Shri Anil P. Dave and Shri Anitya S. Tripathi, both advocates appeared on behalf of the Appellant and reiterated the grounds of Appeal and submitted that they have constructed APMC Shed; that APMC has been created under the Act passed by the Gujarat Legislature for agriculture purpose and not for commercial purposes; that road is connecting to National Highway and also approach road to put and hence exemption is available; that Damli Bridge has been constructed by them and being used by general public; that work order for Veraval-Butrapada Road has been given by the Executive Engineer, Road E Building, Government of Gujarat and will produce evidence to that effect; that Challan dated 19.2.2014 will be produced evidencing payment of Service Tax by them and hence cannot be demanded again; that Somnath Kelvani Mandal School is recognized by Government of Gujarat Board as is evident from Certificate issued by Secretary, Gujarat Secondary Education Board, Gandhinagar; that demand relating construction of classrooms at Denod District and new Vegetable & Fish Marketing building at Dhu is time barred.

3.2 I find that the Appellant paid Service Tax of Rs. 41,69,096/- which has been appropriated in the impugned order. Thus, the Appellant has complied to the provision of Section 35F of the Act and therefore, I take up this appeal for decision.

Findings:-

4. I have carefully gone through the facts of the case, the impugned order, and written submissions made by the Appellant. The issue to be decided in the present case is whether construction services rendered by the Appellant is eligible for exemption under Notification No. 25/2012-ST dated 20.6.2012, as amended or not.

5. I find that the Appellant rendered construction services to Agriculture Produce Market Committee, Veraval, for construction of RCC covered shed, Grain cleaning plant & RCC 558 primarily for use by farmer/agriculturalists during the years 2013-14 and 2014-15. The adjudicating authority denied exemption

contained in Sl. No. 12 of Notification No. 25/2012-ST dated 20.6.2012, as amended on the ground that though APMC was constituted under Gujarat Agriculture Produce Market Act, 1963 for regulation of marketing of agriculture produce but functions carried out by APMC are not covered under functions entrusted to municipality under Article 243W of the Constitution and therefore APMC cannot be considered as 'Governmental authority' as defined under 2(a) of mega exemption notification signed and that activities carried out by APMC are activities of 'business' and 'commerce'. The Appellant has contended that APMC was constituted under Gujarat Agricultural Produce Market Act, 1963 and provisions of this Act clearly lay down that APMC is in the nature of a governmental authority, and all notified agricultural commodities are legally required to be brought to the market yard of such APMC for being sold and that collecting license fee or "market fee" would not alter the public functions carried out by the APMC.

5.1 I find it pertinent to examine Entry No. 12(a) of Notification No. 25/2012-ST dated 20.6.2012, as amended, which is reproduced 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-
- (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;"

5.2 I find that the term 'governmental authority' has been defined under Notification No. 25/2012-ST dated 20-06-2012 as under:

"(a) 'governmental authority' means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution;"

5.3 The definition of "governmental authority" has been amended w.e.f. 30-01-2014, vide Notification No. 02/2014-ST dated 30-01-2014 as under:

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

(i) Set up by an Act of 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;"

5.4 I find that the Appellant was constituted under Gujarat Agriculture Produce Market Act, 1963 duly passed by State Legislature of Gujarat and hence, it is required to examine whether APMC is carrying out function(s) entrusted to a municipality under Article 243W of the Constitution or not. The functions entrusted to a Municipality have been prescribed under Twelfth schedule under Article 243W of the Constitution, which reads as under:

21. TWENTH SCHEDULE (Article 243W)

1. Urban planning including town planning.
2. Regulation of land use and construction of buildings.
3. Planning for agriculture and rural 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. Social improvement and upliftment.
 1. Eradication of poverty.
 2. Provision of urban amenities and facilities such as parks, gardens, playgrounds.
11. Promotion of cultural, educational and aesthetic aspects.
12. Public and burial grounds, crematoriums, mourning grounds and electric crematoriums.
13. Cattle pounds; prevention of cruelty to animals.
14. Vaccination including registration of births and deaths.
15. Public amenities including street lighting, parking lots, bus stops and public conveniences.
16. Regulation of slaughter houses and dairies.

4.5 I find that Agriculture Produce Market Committee, Veraval was constituted under Gujarat Agriculture Produce Market Act, 1963 for regulation of marketing of agriculture produce. The basic purpose of constituting APMC is to prevent and protect farmers and agriculturists from exploitation or the intermediaries and ensures transparency in pricing system so that farmers and agriculturists of that area get fair price of their agricultural produce. The APMC puts legal framework in place mandating wholesale trading of agriculture produce to be carried out through APMC only. APMC creates necessary infrastructure for purchase, sale, storage, weighing and processing of agricultural produce. These activities aid in economical development of the area where APMC functions. The activities carried out by APMC are, thus, in my considered view covered under Sr. No.3 of Twelfth Schedule under Article 243W of the Constitution and hence, APMC needs to be treated as 'governmental authority'. I further find that construction services rendered by the Appellant to APMC, Veraval were primarily for use by farmers /agriculturists and not for commerce or industry. I, therefore, hold that construction services rendered by the Appellant to APMC, Veraval are covered under Entry No. 12(a) of Notification No. 25/2012-ST dated 20.6.2012, as amended and consequently, the Appellant is eligible for exemption of Notification: supra. I, therefore, set aside service tax demand of Rs. 3,69,214/- on the services rendered to APMC, Veraval and consequent penalty imposed under Section 78 of the Act.

(Signature)

6. I find that the Appellant rendered services to M/s Ambuja Cement Ltd for improvement and development of approach road between factory gate to National Highway junction, factory to mines and factory of M/s Ambuja Cement Ltd to factory of M/s GajAmbuja Cement Ltd. The adjudicating authority denied exemption contained in Entry No. 13(a) of Notification No. 25/2012-ST dated 20.6.2012, as amended on the ground that approach roads were constructed to facilitate transportation of raw materials and finished goods manufactured by the factories of M/s Ambuja Cement Ltd and the said approach roads cannot be considered as public roads. The Appellant has contested that merely because these roads and junction were developed and maintained by M/s. Ambuja Cement Ltd, would not make the said public roads as private roads as said roads / junction are used by public and are open to the public access; that the Department has not brought on record any evidence to show that the said roads in question were private property of M/s Ambuja Cement Ltd as the roads in question fall within boundary of the M/s. Ambuja Cement Ltd.

6.1 I find it is pertinent to examine Entry No. 13(a) of Notification No. 25/2012-ST dated 20.6.2012, as amended, which is reproduced as under:

*13. Services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, replacement, or alteration of-

(a) any road, bridge, tunnel, or terminal for road transportation for use by general public;

(Emphasis supplied)

6.2 I find that approach roads between factory to mines of M/s Ambuja Cement Ltd and between two factories of M/s Ambuja Cement Ltd are constructed and maintained by M/s Ambuja Cement Ltd for their own need and smooth functioning of their operations and said roads cannot be said to be public roads. Regarding services rendered for construction, repair and maintenance of road between National Highway junction to the factory, I find that the construction cost was borne by M/s Ambuja Cement Ltd to facilitate smooth transportation of their raw materials and finished goods and there is no participation of the Government of Gujarat. Hence, any road even if being used by Public cannot be said to be road constructed or maintained for use by general public. M/s Ambuja Cement Ltd got these roads constructed for their own purpose and therefore services rendered by the Appellant for construction and maintenance of said approach road cannot be held to be for public use. I, therefore, hold that the services rendered for construction, repair and maintenance of roads to M/s Ambuja Cement Ltd would not be covered under Entry No. 13(a) of Notification No. 25/2012-ST dated 20.6.2012, as amended. Consequently, the Appellant is liable to pay Service Tax of Rs. 8,82,401/- on the services rendered to M/s Ambuja Cement Ltd.

(Signature)

7. I find that the Appellant rendered services to Somnath Kelvani Mandal, Kachnar for construction of school building. The lower adjudicating authority held that the services provided by the appellant to Somnath Kelvani Mandal, Kachnar are not eligible to exemption since Somnath Kelvani Mandal is a registered trust and therefore, school run by said trust cannot be called a school run by government, local authority or Governmental Authority. It is pertinent to examine Entry No. 12 of Notification No. 25/2012-ST dated 20.6.2012, which is reproduced 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, alteration or alteration of -

- (a) civil structures 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 historical importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
- (c) a structure meant predominantly for use as (i) an educational, (ii) a medical, or (iii) a site of cultural establishment;
- (d) canal, dam or other irrigation works;
- (e) supply, conduit or line of for (i) water supply, (ii) water treatment, or (iii) sewerage treatment or disposal; or
- (f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65B of the Act."

(Emphasis supplied)

7.1 I find that Notification No. 25/2012-ST dated 20.6.2012, inter-alia, exempted the services rendered to Government, a local authority or a governmental authority for construction of a structure used for educational purpose vide entry No. 12(c) during the period from 01.7.2012 to 31.3.2015. I find that Somnath Kelvani Mandal, Kachnar to whom the Appellant rendered services is a trust and benefit of said exemption is available only if the services are rendered to Government, a local authority or a governmental authority. In view of that Somnath Kelvani Mandal is not covered by "Government, a local authority or a governmental authority" and consequently not eligible for exemption under Entry No. 12(c) supra. The argument of the Appellant that Somnath Kelvani Mandal is not engaged in commerce, industry or business or profession is irrelevant for the purpose of claiming exemption under Notification supra. I therefore, hold that the Appellant is liable to pay Service Tax of Rs.

Signature

4,42,464/- on the services rendered to Sannath Kelvam Mandal, Kodikeri for construction of school building.

8. I find that the Appellant rendered services to GETCO for construction of CR building, Foundation Cable Trench, Compound Wall, Road Staff Quarters etc. The lower adjudicating authority held that the Appellant rendered construction service to GETCO, which is commercially engaged in transmission of electricity. I find that the Appellant has not disputed about the services rendered to GETCO or taxability of service. Only defence put forth by the Appellant is that they had discharged service tax liability vide Challan dated 19.2.2014 but the lower adjudicating authority had not considered it and again confirmed service tax in the impugned order making it duplicate demand. I find that the Appellant was required to pay service tax of Rs. 39,442/- in respect of services rendered to GETCO and the Appellant has paid service tax of Rs. 30,527/- vide Challan dated 19.2.2014. I find that the Appellant has paid total Service Tax of Rs. 44,65,096/-, including service tax of Rs. 30,527/- as per Annexure-A of SOA and the said service tax amount has been appropriated in the impugned order against confirmed demand. So, service tax of Rs. 30,527/- paid vide Challan dated 19.2.2014 is appropriated in the impugned order and there is no duplication of demand as argued by the Appellant.

9. I find that the Appellant rendered services to Gujarat Council of Elementary Education (GCEE) for construction of classrooms in various primary schools. The lower adjudicating authority held that the services provided by the appellant to GCEE vide Work Orders dated 29.5.2015, dated 7.8.2015 and dated 30.5.2015, are not eligible to exemption, since the exemption contained in entry No. 12 of Notification No. 25/2012-ST dated 20.6.2012 was withdrawn vide Notification No. 6/2015-ST dated 1.03.2015 effective from 1.4.2015 and said Work Orders were issued after 1.4.2015. The Appellant has contended that construction services rendered to GCEE are exempt from payment of service tax because the Council is a body constituted for imparting education and services were rendered for the construction of class rooms and school infrastructure and such activities were exempted for the last several years by virtue of the notifications issued by the Central Government. I find that Notification No. 25/2012 ST dated 20.6.2012, inter alia, exempted services rendered to Government, a local authority or a governmental authority for construction of a structure used for educational purpose vide entry No. 12(c). However, said exemption was withdrawn vide Notification No. 6/2015-ST dated 1.3.2015 effective from 1.4.2015 and the construction services rendered by the Appellant to GCEE vide Work Orders dated 29.5.2015, dated 7.8.2015 and dated 30.5.2015

are for the period after 1.4.2015. Hence, the Appellant is not eligible for exemption under Notification No. 25/2012-ST dated 20.6.2012, as amended. I, therefore, uphold service tax demand of Rs. 15,79,880/- in respect of services rendered to GCEE.

10. The lower adjudicating authority observed that the Appellant rendered services to M/s Katar Construction Ltd for widening and strengthening of Veraval-Sutrapada Road as sub-contractor. However, nature of services provided by them is not clear since the Appellant did not provide copy of sub contract agreement and invoices and held that amount received by them was not on account of construction of road and hence, exemption under Entry No. 13(a) of Notification No. 25/2012-ST dated 20.6.2012 is not available to the Appellant. On the other hand, the Appellant submitted true copy of the work order dated 28.05.2009 was provided during the adjudication proceedings. The Appellant further submitted that they rendered construction services for widening and strengthening of Veraval to Sutrapada Road which is a public road and hence, service tax is not payable. I have gone through the work order dated 26.5.2009 and office order dated 16.6.2009, both issued by Executive Engineer, Government of Gujarat, Road & Building, Junagadh as well as notice dated 21.6.2009 issued by M/s Katar Construction Ltd to the Appellant to start the work. I find that the work order was issued in the year 2009 whereas the Appellant has shown receipt of income of Rs. 57,51,911/- in the year 2013-14. I find that the work was to be completed within 18 months as per Work Order dated 26.5.2009 whereas the Appellant has shown receipt of income after 4 years of Work Order date. The Appellant has not produced any evidence of the Government of Gujarat as to when the work was completed. I also find that the Appellant has not produced copy of sub-contract agreement or invoices raised for the said transactions neither before the lower adjudicating authority nor before this Appellate Authority. The Appellant has thus been not able to prove that income of Rs. 57,51,911/- pertains to the construction services rendered for widening and strengthening of Veraval to Sutrapada Road. I, therefore, have no option but to hold that the Appellant is not eligible for exemption under Entry No. 13(a) of Notification No. 25/2012-ST dated 20.6.2012, as amended and to uphold confirmation of service tax demand of Rs. 7,10,936/-.

11. I find that the Appellant booked 'transportation income' in their books of account during F.Y. 2013-14 and F.Y. 2014-15 in respect of services provided to M/s Paver Industrial and Construction Corporation for transportation of goods (sand and grit). The Adjudicating authority is not correct in holding that the services provided by the Appellant to M/s Paver Industrial construction

corporator for building public roads in Kodinar Taluka is not eligible to exemption since the appellant is not able to prove the nature of services. However, it is not disputed that income was earned by the Appellant for providing services to M/s Paver Industrial and Construction Corporation for transportation of sand and grit. I find that the recipient of transportation service is liable to pay service tax on reverse charge basis in terms of Rule 2(i)(d)(f) which is reproduced as under:

"(f) in relation to service provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is:

- (I) any factory registered under or governed by the Factories Act, 1946 (66 of 1946);
- (II) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
- (III) any co-operative society established by or under any law;
- (IV) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (11 of 1944) or the rules made thereunder;
- (V) any body corporate established, by or under any law; or
- (VI) any partnership firm which is registered or not, under any law including association of persons;

any person who pays or is liable to pay freight, either himself or through his agent for the transportation of such goods by road in a goods carriage."

11.1 I find that M/s Paver Industrial and Construction Corporation, who paid freight, are covered by sub-clause (VI) above and consequently M/s Paver Industrial and Construction Corporation are liable to pay service tax on reverse charge basis, being recipient of service and not the Appellant. I, therefore, set aside service tax demand of Rs. 53,369/- in respect of transportation services rendered to M/s Paver Industrial and Construction Corporation and consequent penalty imposed under Section 78 of the Act.

12. I find that the Appellant rendered services to M/s Raj Trishul Construction as a sub-contractor for construction of Damli Bridge and availed exemption from service tax in view of Entry No. 13 of Notification No. 25/2012-ST dated 20.6.2012, as amended. The Appellant contended that they rendered services to M/s Raj Trishul Construction as sub-contractor for construction of Damli Bridge in Kodinar, which is used by general public for crossing Damli river and therefore they are eligible for exemption from service tax. I find that the services rendered to construction of bridge for use by general public is exempted from Service Tax in terms of Entry No. 13(a) of Notification No. 25/2012-ST dated 20.6.2012, as amended. It is not disputed that the Appellant rendered service to M/s Raj Trishul Construction as sub-contractor for construction of Damli Bridge in Kodinar which is used by general public for crossing Damli river. I, therefore, hold that the Appellant is eligible for exemption under Notification supra and not liable to Service Tax. Accordingly, I set aside confirmation of service tax

demand of Rs. 59,782/- and consequent penalty imposed under Section 78 of the Act.

13. I find that the Appellant rendered construction services to Municipal Council, Diu and P.W.D., Diu during the year 2015-16. I find that the Appellant has not disputed confirmation of service tax demand on merits but contested on the ground that the demand is time barred. I find that demand was confirmed by invoking extended period of limitation of time on the ground that there was suppression of facts. I find that the Appellant had not paid service tax in respect of construction service rendered to Municipal Council, Diu and P.W.D., Diu during the year 2015-16. The non payment of service tax on said services was unearthed during investigation carried out against the Appellant. The Appellant had suppressed the fact of providing above service to Municipal Council, Diu and P.W.D., Diu with intent to evade payment of service tax. So, there was suppression of facts and extended period of limitation was rightly invoked in the impugned order. I, therefore, discard this contention as devoid of merit and uphold confirmation of service tax demand of Rs. 25,43,333/-.

14. The Appellant argued that they rendered services to Government/ educational institutions who were/are not engaged in commerce, industry or business and hence, services provided to them are exempted from payment of service tax; that only because the Department entertained a different view about the liability of the transactions, invocation of larger period of limitation and imposition of penalty under Section 78 are erroneous. I have discussed and held in paras supra as to how the Appellant had wrongly claimed exemption of Notification No. 15/2012-ST dated 20.6.2012, as amended in respect of services rendered to M/s Amrta Construction Ltd, Gujarat Council of Elementary Education, GEICO, Somnath Kalkani Mandar, M/s Ketan Construction Ltd etc. The Appellant did not submit ST-3 Returns in time to prevent Department to unearth non payment of service tax on the said services, which was unearthed during investigation carried out by the Department against the Appellant. So, there was suppression of facts and extended period of limitation was rightly invoked in the impugned order. Since the Appellant suppressed the facts of non-payment of service tax, penalty under Section 78 of the Act is mandatory as has been held by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (235) E.L.T. 3 (S.C.) wherein it is held that when there are ingredients for invoking extended period of limitation for demand of duty, imposition of penalty under Section 11AC is mandatory. The ratio of the said judgement applies to the facts of the present case. I, therefore, uphold that penalty under Section 78 of the Act is leviable to the extent of duty evaded.

(Signature)


14.1 It is a fact that the Appellant had not assessed the tax on the services provided under the category of 'Works Contract Service' and therefore, penalty of Rs. 10,000/- imposed under Section 77(2) of the Act is required to be upheld and to do so.

14.2 Regarding late fee imposed under Rule 7C of the Rules, I find that the Appellant late filed ST-3 returns for the period from April, 2014 to March, 2015 and hence rightly held liable to late fee of Rs. 13,400/- by the lower adjudicating authority. I, therefore, uphold the late fee of Rs. 13,400/- imposed under Rule 7C of the Rules.

15. In view of above, I modify the impugned order to set aside confirmation of service tax demands on construction services rendered to APMC, Veraval, construction of Damli bridge and on their transportation income as detailed above and uphold remaining demand of the impugned order.

16. अपीलकर्ता द्वारा दिये गये अवेतन का निपटारा उपरोक्त तरीके से किया जाता है।

16. The appeal filed by the Appellant is disposed off as above.

By R.P.A.D.	 R.P.A.D.	(कुमार सुतोष) प्रधान आयुक्त (अधीनस्थ)
To, M/s K.V. Barad, 124, 1 st floor, Marketing Yard, Kodinar.	सेवा में, श्री. के.वी. बारद, 124, प्रथम मंजिला, बाजारिया बंद, कोडिनार।	

प्रतिनिधि :-

- 1) प्रधान मुख्य आयुक्त, परन्तु एन सेवा बंद एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, परन्तु एन सेवा बंद एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तानालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) आयुक्त आयुक्त, परन्तु एन सेवा बंद एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तानालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 4) गई प्राप्ति।

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