

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



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

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रजिस्टर्ड डाक ए.डी.द्वारा :-

क	अपील / फाइल नं. / Appeal File No.	मूल आदेश में / O.I.O. No.	दिनांक / Date:
	V2/70/BVR/2018-19	BHV-EXCUS-000-JC-048-2017-18	29/1/2018

ख अपील आदेश नं. (Order-In-Appeal No.):

**BHV-EXCUS-000-APP-120-2019**

आदेश का दिनांक / Date of Order:	<b>15.05.2019</b>	जारी करने की तारीख / Date of issue:	<b>16.05.2019</b>
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श्री कुमार संतोष, प्रधान आयुक्त (अपील्स), राजकोट द्वारा पारित /  
Passed by Shri Kumar Santosh, Principal Commissioner (Appeals), Rajkot

ग अवर आयुक्त / संयुक्त आयुक्त / उपायुक्त / महायुक्त आयुक्त, केन्द्रीय उत्पाद शुल्क / सेवा कर / वस्तु एवं सेवा कर,  
राजकोट / जामनगर / सांझीधाम द्वारा उपरलिखित जारी मूल आदेश से मूजित: /  
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST,  
Rajkot/Jamnagar/Gandhidham :

घ अपीलकर्ता & प्रतिवादी का नाम एवं पता / Name & Address of the Appellants & Respondent :-

M/s Shreenath Residency, Shop No. 11,12,13, Shreenath Arcade, Opp. Jain Balashram, Parsival Para, Mahuva,  
Dist- Bhavnagar.

इस आदेश (आपल) न व्याप्त काह व्यक्ति निम्नलिखित तरिका में उपयुक्त प्राधिकरण / प्राधिकरण के समक्ष अपील दाखल कर सकता है।/  
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.

(A) मूल आदेश, केन्द्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं  
वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत 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) वस्तु एवं सेवा कर एवं मूल्य निर्धारण अधिनियम अधीनस्थ मूल्य निर्धारण, केन्द्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं. 2, आर.के. पुरम, नई दिल्ली  
को, या को विशेषाधिकार।  
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 उल्लेखित अपीलों के अलावा शेष सभी अपीलों के मूल आदेश, केन्द्रीय उत्पाद शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण (सिस्टेट) की  
पश्चिम क्षेत्रीय पीठ, द्वितीय तल, बहमाली भवन अमावा अहमदाबाद- 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,  
Asarva Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित क्रि. सं. 5  
प्रारूप EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और कमाया गया  
जुर्माना, रुपये 5 लाख या उससे कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये  
अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के महायुक्त  
रजिस्ट्रार के नाम में किमी.पी. मार्बजिनक धेरे के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उन  
शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 demand/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/-.

(3) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवा कर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित  
प्रारूप S.T.5 में चार प्रतियों में की जा सकती एवं उनके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उन्में से एक प्रति  
प्रमाणित होती चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवा कर की मांग, ब्याज की मांग और कमाया गया जुर्माना, रुपये 5 लाख या उससे  
कम, 5 लाख रुपये या 50 लाख रुपये तक अथवा 50 लाख रुपये से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित  
जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के महायुक्त रजिस्ट्रार के नाम में किमी.पी.  
मार्बजिनक धेरे के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उन शाखा में होना चाहिए जहां  
संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपये 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 of 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/



- (B) विन अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रारूप S.T.-7 में की जा सकती एवं उसके साथ अनुसूच, केन्द्रीय उत्पाद शुल्क अधिका (अपील), केन्द्रीय उत्पाद शुल्क द्वारा जारी अधदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अधिका (उत्पाद), केन्द्रीय उत्पाद शुल्क/सेवाकर, की अपीलार्थ न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करने होगी।  
The appeal under sub section (2) and (2A) of the section 86 of 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.
- (C) नीचा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थ न्यायाधिकरण (आपेल) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35ए के अंतर्गत, जो की विनियम अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलार्थ प्रक्रियाओं में अपील करने समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%) उच्च मांग एवं जमाना विवादित है, या जमाना, उच्च वेतन जमाना विवादित है, या जमाना किया जाए, यथा कि इन धारा के अंतर्गत जमा कि जमा वाली अधिभूत देय राशि इस कराई न्याय में अधिभूत है।  
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत मांग किए गए शुल्क में निम्न शामिल है  
(i) धारा 11 डी के अंतर्गत रकम  
(ii) नोनवेट जमा की ली गई राशि  
(iii) नोनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम  
- यथा कि इन धारा के प्रावधान विनियम (नं 2) अधिनियम 2014 के अंतर्गत में पूर्व किनी अपीलार्थ प्रक्रियाओं के माध्यम से न्याय न्यायन अर्थात् अपील को लागू नहीं होगी।  
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1994 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 Cenvat Credit taken;  
(iii) amount payable under Rule 6 of the Cenvat 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.
- (D) भारत सरकार को पुनरीक्षण आवेदन :  
**Revision application to Government of India:**  
इस आदेश को पुनरीक्षणार्थक निम्नलिखित मामला में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के अंतर्गत अपील, भारत सरकार, पुनरीक्षण आवेदन इकाई, विन सेवाकर, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, मंसूर मार्ग, नई दिल्ली-110001, को किया जाना 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 1994 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, जहां नुकसान किसी माल को किनी कारखाने में भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह में दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किनी 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 गई 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) ननिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो क्रेडिट प्रोविड इस अधिनियम एवं इसके विनियम प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा विन अधिनियम (नं 2), 1998 की धारा 109 के द्वारा नियत की गई वार्षिक अथवा अन्तर्गत कर का वार्षिक प्रतिफलित किए गए 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 प्रतियाँ प्रारूप संख्या EA-8 में, जो की केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत किनिर्दिष्ट है, इस आदेश के प्रारंभ के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियाँ संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के माध्यम 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 OIO and Order-in-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1994, under Major Head of Account.
- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।  
जहां मंगल रकम एक लाख रुपये या उससे कम होती है तो रुपये 200/- का भुगतान किया जाए और यदि मंगल 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 is more than Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
- (D) यदि इन आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त ढंग से किया जाना चाहिए। इस स्थिति के होते हुए भी की निम्न प्रकार कार्य में बचने के लिए यथास्थिति अपीलार्थ न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाना है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one apply to the Appellant 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. 1000/- for each.
- (E) यथास्थिति न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अंतर्गत मूल आदेश एवं न्यायन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क विकसित करना होगा।  
One copy of application or O.I.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-I in terms of the Court Fee Act, 1975, as amended.
- (F) नीचा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलार्थ न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाना 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 अपीलार्थ प्रक्रियाओं को अपील दाखिल करने में संबंधित व्यक्त, विनियत और नवीनतम प्रावधानों के लिए, अपीलार्थ विभागीय 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

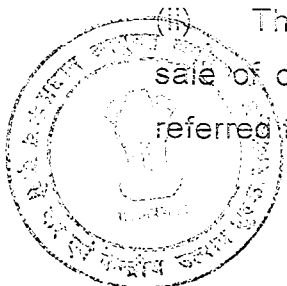
M/s. Shreenath Residency, Shop No.11,12,13, Shreenath Arcade, Opp. Jain Balashram, Parsival Para, Mahuva, Dist. Bhavnagar holding service tax registration No. ABXFS9868CSD001 (hereinafter referred to as 'Appellant') filed present appeal against Order-in-Original No. BHV-EXCUS-000-JC-048-2017-18 dated 29.1.2018 (hereinafter referred to as 'the impugned order') passed by the Joint Commissioner, Central GST, Bhavnagar (hereinafter referred to as 'the lower adjudicating authority').

2. The brief facts of the case are that the appellant was engaged in providing services under the category of "Construction of Residential Complex"; that searches were conducted at business premises of Appellant and residential premises of partner of the appellant on 14.9.2013. The investigation and statements of different persons recorded revealed that appellant had launched scheme of 108 residential houses as per 'lay out plan' in Brochure but did not pay service tax on payments received from prospective buyers prior to completion certificate during the period from 1.4.2011 onwards. Show Cause Notice dated 1.10.2014 was issued to the Appellant demanding service tax of Rs.1,03,25,412/- under proviso to Section 73(1) of the Act, interest under Section 75 of the Act, proposing appropriation of service tax of Rs.18,55,524/- and interest of Rs.26,801/- paid by them and imposition of penalty under Section 76, Section 77 and Section 78 of the Act. The lower adjudicating authority vide the impugned order confirmed demand of Rs.1,03,25,412/- under proviso to Section 73 (1) of the Act along with interest under Section 75 of the Act, appropriated Rs.18,55,524/- as service tax and Rs.2629/- as and Rs.26,801/- as interest already paid by the appellant, imposed penalty of Rs.1,03,25,412/- under Section 78 of the Act and penalty of Rs.10,000/- under Section 77(2) of the Act.

3. Being aggrieved by the impugned order, the appellant preferred the present appeal, inter-alia, on the following grounds:

(i) There is an error of Rs.19,27,400/- in calculation sheet (Annexure-A to the SCN) as receipt of total amount comes to Rs.33,42,01,085/- (Rs.32,51,00,600/- + Rs.91,00,485/-) as against Rs.33,61,28,485/- mentioned in last column of Annexure -A to the SCN.

(ii) The adjudicating authority has ignored their submission in respect of sale of open plot where no construction was done by them; that appellant referred to the submissions made by them vide paragraph (2.4 to 2.6) of their



written submission dated 18.4.2016; that their submission at para 2.3 of their submission filed in reply to SCN with regard to finding at Para 21.4 of the impugned order.

(iii) They provided "works contract services" to 68 plot purchasers and not construction of office /residential complex; that no investigation was extended to any purchaser; that no corroborative evidences available on record about receipt of cash by them; that submissions made by them vide their written reply dated 5.9.2016 is not considered by the lower adjudicating authority; that they referred to Para 2.2 of their written reply and para 4 of submission dated 17.5.2018; that case law relied upon by the lower adjudicating authority is not applicable in this case; that against findings at Para 24 of the impugned order, appellant submitted that plots are open and no construction has been carried out.

4. Personal hearing in the matter was attended by Shri Madhav N. Vadodariya, Advocate, on behalf of the Appellant and reiterated the grounds of appeal and made written submission and stated that they have not collected service tax and hence, benefits of cum value tax should be given; that they are not contesting service tax liability for 31 units but service tax is not payable on 68 houses; that service tax should be on works contract service and not on 'construction of complex' service; that they had contract with plot owners; that as per works contract service, only 40% value should be taxed.

4.1 In written submission, appellant stated that the value in respect of 68 houses required to be recalculated for working of service tax liability of appellant; that no penalty under Section 77 and Section 78 of the Act is imposable as appellant has not suppressed any fact with intent to evade payment of duty.

### **FINDINGS**

5. I have carefully gone through the facts of the case, the impugned order, the grounds of Appeal Memorandum and submissions made by the Appellant during personal hearing. The issue to be decided in the present appeal is as to whether demand of service tax confirmed by the impugned order is correct or not?

5.1 I find that Appellant filed appeals beyond period of 60 days but within further period of 30 days stating that their consultant was busy with various appellate authorities of CBEC during months from Jan,18 to Mar, 2018 and also in attending adjudication proceedings. Since the appeals have been filed within time limit of further 30 days as prescribed in Section 35(1) of the Act, I condone the delay in filing of appeals and proceed to decide both appeals on merit.

6. The appellant admitted service tax liability of 31 houses constructed by them however, contested service tax on construction of 68 house by them, was constructed under contract and hence service provided by them are classifiable under "works contract service"; that they have sold open plot in some cases and no service tax was payable on such plots.

6.1 I find that it has not been disputed by the appellant that they launched scheme nameiy "Shreenath Residency" for construction of complex of 108 residential units with common facilities as per lay out plan in Brochure of the scheme; Appellant also admitted that service tax is payable on 68 houses constructed by them but under works contract service. I find that appellant while contesting this point has not produced any contract made with any of the service recipient in support of their claim. I also find that appellant in their reply dated 18.4.2016 to SCN, at Para 2.2 had admitted that construction of 68 houses were started prior to transfer of the plots to the prospective customers. The lower adjudicating authority at Para 22.2 found that sales deed in respect of 108 Plots were entered in to between 28.9.2011 to 31.3.2012 for similar Rate of Rs.2850/- per Sq Mtr in all cases. Para 22.2 reads as under:

*"22.2 I find that the Noticee, in support of their above contention, have enclosed list containing details of all sales-deed executed by them with purchasers of plots. On perusal of the said list, it is observed that it contains detail like Plot No., Name of the Purchaser, Date of Document, Registration No. of Document, Area/ Size of Plot (in Sq Mtr) and Cost of Land (Plot). It is also forthcoming from the said list that sales-deed have been executed in respect of all 108 plots and not for only 68 purchasers, as claimed by the Noticee. Further, these sales-deed have been executed between 28.9.2011 to 31.03.2012 and the cost of land as per the said agreement comes to Rs.2850/-(approx.) per Sq. Mtr in respect of all 108 purchase".*

6.2 I also find that the lower adjudicating authority at Para 22.3 & 22.4 found that Partner in his statement dated 14.9.2013 had not stated correct number of under construction houses and hence, inquiry extended to sub contractors revealed that all constructions were being done by the appellant and worksheets seized under Panchnama are also showing identical amount for ready made



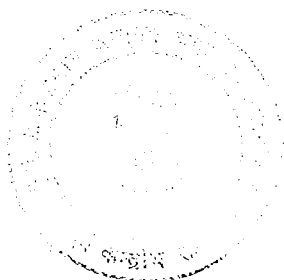
houses in all cases without bifurcating it in Land sale price and construction cost. I find that the lower adjudicating authority has specifically recorded that,

- 1) Sales deed of plots were executed in all 108 cases
- 2) Cost of Land in all these sale deed is Rs.2850/- (in all 108 case)
- 3) Sales deed in all 108 cases have been executed between 28.9.2011 to 31.3.2012
- 4) work sheets in all cases shows sales price of ready built house
- 5) In case of 68 houses too, amount charged is inclusive of land and certain amount was also collected prior to execution of sales deed.

6.3 I find that above facts are not in dispute and appellant failed to establish as to how the construction of 68 houses was different service; that the lower adjudicating authority has recorded in his findings from Para 22.1 to 22.6 and the appellant has not been able to contradict these by producing any evidence in their support; that Appellant could not produce a single contract entered into with any of 68 service recipient showing contractual obligations to other parties. I also find from the statement dated 29.9.2014 of Shri Harshbhai Gulbrai Mehta, Partner of Appellant (Para 5.10 of the impugned order) that neither statement reveals such 68 cases nor appellant has submitted any document in support of their contention. Thus, appellant squarely failed to establish that 68 service recipients were different from 31; it is also evident that Appellant in VCES scheme did not declare "works contract" service in respect of these 68 houses whereas, the same has been claimed after booking of the case against them by the Department. Therefore, I am of the considered view that appellant has attempted to prove what is not in existence only to escape from service tax liability and hence, their appeal on this count does not sustain.

7. Appellant further contested findings recorded at Para 24 of the impugned order saying that the plots are open and the findings of the impugned order are on presumption basis. I would like to reproduce Para 24 of the impugned order, for better appreciation of facts:-

*" 24. The Noticee submitted that Plot NO.1,2,3,14 & 105 were sold as open plot and purchasers have constructed flat thereon. More over Plot No.106 to 109 is still open land. Based on this submission, they submitted that amount shown against these plots in Annexure -A to Show Cause Notice should be deducted. In this regard, I find that the Noticee purchased in all 108 plots and floated scheme of residential house thereon as per brochure seized from their site office. The perusal of said Annexure-A to Show Cause Notice, it is observed that residential house was booked by the partners of the Noticee's firm or their relatives and cost thereon was paid out of their investment in the firm. They might have decided at a later stage not to buy residential house and chosen to use the land for some other purpose or to keep it open. Since, they have booked the residential house and made the payment, they become*



*prospective buyer, therefore, the amount paid by them is subject to payment of Service Tax. As such, the request of the Noticee to deduct the amount is not correct and hence rejected. In view of the above discussion in forgoing paras, the request to correct the demand amount as per Annexure B of their submission is also not tenable and hence rejected."*

7.1 I find from the facts recorded above that the lower adjudicating authority has not allowed the deduction as the amount was paid to the Appellant by the partner in personal capacity. I find that with effect from 1.4.2011, under the provisions of Point of Taxation Rules, 2011, any advance amount received by the service provider against the taxable service, the date of receipt of such advance is to be considered as point of taxation. Rule 3 of Point of Taxation Rules, 2011 reads as under:-

**'Rule 3. Determination of point of taxation.** - For the purposes of these rules, unless otherwise provided, 'point of taxation' shall be, -

(a) the time when the invoice for the service provided or agreed to be provided is issued :

*Provided that where the invoice is not issued within the time period specified in Rule 4A of the Service Tax Rules, 1994, the point of taxation shall be the date of completion of provision of the service.*

(b) in a case, where the person providing the service, receives a payment before the time specified in clause (a), the time, when he receives such payment, to the extent of such payment :

*Provided that for the purposes of clauses (a) and (b), -*

(i) in case of continuous supply of service where the provisions of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider, the date of completion of each such event as specified in the contract shall be deemed to be the date of completion of provision of service;

(ii) wherever the provider of taxable service receives a payment up to rupees one thousand in excess of the amount indicated in the invoice, the point of taxation to the extent of such excess amount, at the option of the provider of taxable service, shall be determined in accordance with the provisions of clause (a).

*Explanation.* - For the purpose of this rule, wherever any advance by whatever name known, is received by the service provider towards the provisions of taxable service, the point of taxation shall be the date of receipt of such advance.

7.2 In terms of provisions of Rule 3 of the Point of Taxation Rules, 2011, Service Tax is due when the invoice is raised or on date of payment or provision of service, whichever is earlier. Hence, the appellant is liable to discharge the tax liability on payments received by them as payment is not in dispute.

8. I, therefore, hold that the confirmation of demand of service tax of Rs. 1,03,25,412/- by the lower adjudicating authority is correct, legal and proper. It is natural consequence that the confirmed demand is required to be paid along with interest at applicable rate under Section 75 of the Act. I, therefore, uphold the impugned order for paying interest also by the appellant.



9. It is a fact that the appellant had declared their service tax liability as 13,26,602/- only under VCES scheme on 30.9.2013 as against actual service tax liability of Rs.1,03,25,412/- as held above. Thus, the appellant has made mis-statement of facts with intent to evade payment of service tax. Thus, the appellant has mis declared their service tax liability under VCES,2013 and hence, penalty is imposable on the appellant under Section 78 of the Act. Thus, penalty of Rs.1,03,25,412/- is imposable on them under Section 78 of the Act.

10. Since the appellant failed to file ST-3 returns also in violation of Section 70 of the Act read with Rule 7 of Service Tax Rules, 1994, penalty of Rs.10,000/- under Section 77 of the Act is imposable on them and hence, the impugned order to this extent is also correct, legal and proper. Accordingly, I uphold the imposition of penalty of Rs.10,000/- on appellant under Section 77(2) of the Act.

11. In view of above, I uphold the impugned order and reject this appeal.

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

12. The appeal filed by the Appellant is disposed off in above terms.

*(Signature)*  
प्रधान आयुक्त  
अहमदाबाद (अपील)

*(Signature)*  
(कुमार संतोष)  
प्रधान आयुक्त(अपील)

पंजीकृत डाक द्वारा

M/s. Shreenath Residency, Shop No.11,12,13, Shreenath Arcade, Opp. Jain Balashram, Parsival Para, Mahuva, Dist: Bhavnagar	जेसर्स श्रीनाथ रेसिडेंसी शॉप नं ११,१२,१३ , श्रीनाथ आर्केड , जैन बालाश्रम के सामने, परसिवल परा , महुवा
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प्रति:

- १ प्रधान मुख्य आयुक्त, केन्द्रीय वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- २ आयुक्त, केन्द्रीय वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- ३ संयुक्त आयुक्त, केन्द्रीय वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आगे आवश्यक कार्यवाही हेतु।
- ४ गार्ड फाइल।

