



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



सत्यमेव जयते

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

Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com

रजिस्टर्ड डाक ए.डी.द्वारा :-

DIN- 20201064SX00002B1E10

क	अपील / फाइल संख्या/ Appeal / File No. V2/65/RAJ/2020	मूल आदेश सं / O.I.O. No. 3/JC(AKS)/2020-21	दिनांक/ Date 13/07/2020
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ख अपील आदेश संख्या (Order-In-Appeal No.):

**RAJ-EXCUS-000-APP-103-2020**

आदेश का दिनांक / Date of Order:	<b>01.10.2020</b>	जारी करने की तारीख / Date of issue:	<b>08.10.2020</b>
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श्री गोपी नाथ, आयुक्त (अपील्स), राजकोट द्वारा पारित/  
Passed by **Shri Gopi Nath**, Principal Commissioner (Appeals), Rajkot

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर/ वस्तु एवं सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /  
Arising out of above mentioned OIO issued by Additional/Joini/Deputy/Assistant Commissioner, Central Excise/ST / GST,  
Rajkot / Jamnagar / Gandhidham :

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

**M/s. J.K. Securities & Consultancy, 103, Sagar Arcade, OPP. Gurukul, Gondal Road, Rajkot.**

इस आदेश (अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपर्युक्त 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 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) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, अर. 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 बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा 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, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above

(iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवाली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र 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 लगाया गया जुर्माना, रुपए 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 संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र 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) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994 के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकती है एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रामाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 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 संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र 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 fee of Rs. 1,000/- 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) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकती है एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उप-आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रतियाँ भी साथ में संलग्न करनी होंगी। /

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.

- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल हैं:

- (i) धारा 11 डी के अंतर्गत रकम.
- (ii) सेनवेट जमा की गयी गई गलत राशि
- (iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जों एवं अपील को लागू नहीं होगा। /

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 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.

- (C) भारत सरकार कोपरीक्षण आवेदन :

**Revision application to Government of India:**

इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरतक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद 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 1944 in respect of the following case, governed by first provision to sub-section (1) of Section-35B ibid.

- (i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने 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 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 or 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) सूचित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समयावधि पर या बाद में पारित 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 प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संपेषण के 3 माह 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 साक्ष्य के तौर पर TR-6 को 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, 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 हो 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, उपर्युक्त ढंग से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय 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.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-I के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए। /

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) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर 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 अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी 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. J.K. Securities & Consultancy, Rajkot (*hereinafter referred to as "Appellant"*) filed appeal No. V2/65/Raj/2020 against Order-in-Original No. 3/JC(AKS)/2020-21 dated 13.7.2020 (*hereinafter referred to as 'impugned order'*) passed by the Joint Commissioner, Central GST, Rajkot (*hereinafter referred to as 'adjudicating authority'*).

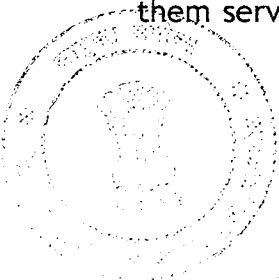
2. The brief facts of the case are that the Appellant was engaged in providing Security Service and Manpower Recruitment or Supply Agency Service and was registered with Service Tax. During audit of the records of the Appellant, it was observed that the Appellant had supplied drivers and security guards to various Government offices and Rajkot Municipal Corporation for use in public health service during the period from 2014-15 to 2017-18 (upto June,2017); that the Appellant was claiming exemption from paying service tax under Notification No. 25/2012-ST dated 20.6.2012, but failed to provide documentary evidences to establish pre-requisition of such services for specific purpose while entering into contract. Hence, it appeared to the Audit that the Appellant was liable to pay service tax on the said services.

2.1 The Show Cause Notice No. V.ST/15-17/Audit/SCN-JC-08/2019-20 dated 10.10.2019 was issued to the Appellant calling them to show cause as to why service tax of Rs. 66,66,005/- should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994 (*hereinafter referred to as 'Act'*), along with interest under Section 75 *ibid* and proposed imposition of penalty under Sections 77 and 78 of the Act.

2.2 The aforesaid Show Cause Notice was adjudicated by the Adjudicating Authority vide the impugned order who confirmed service tax demand amounting to Rs. 66,66,005/- under Section 73(1) of the Act, along with interest under Section 75 and imposed penalty of Rs. 66,66,005/- under Section 78 and Rs. 10,000/- under Section 77 of the Act.

3. Aggrieved, the Appellant has filed the present appeal, *inter alia*, on following grounds:

(i) The Adjudicating Authority has duly accepted that personnel supplied by them served the health department offices, ICDS (Integrated Child Development



Scheme) offices, Primary Health Centers of the local authority and the Government. However, the Adjudicating Authority has denied the exemption by holding that the same cannot be treated as an integral component or an essential or indispensable requirement for the provision of public health service.

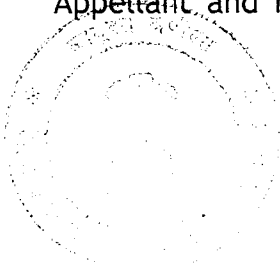
(ii) That the Adjudicating Authority has acknowledged that supply of drivers and security guards is a peripheral service which is ancillary in nature for providing the public health care activity by the Government hospitals. Though the notification makes no distinction between the main and peripheral or ancillary service when provided for advancement or facilitation of public health service, the above findings of Ld. Adjudicating Authority clearly establish that security guards and drivers were supplied for providing the public health service, whether of main or peripheral/ancillary nature. Hence, the impugned order denying the exemption is liable to be quashed and set aside.

(iii) That the Adjudicating Authority has also erred in failing to properly appreciate the certificates issued by the government authority certifying that personnel supplied by the appellant had served the cause of public health only. Therefore, on this ground also, the impugned order is not tenable in the eyes of law and the same is liable to be quashed and set aside.

(iv) That the Adjudicating Authority has noted that 'public health' is not defined in the Act, Rules or notification and also on account of the fact that the notification does not make any distinction between the main and peripheral or ancillary service when all the services were undeniably provided at the government hospitals, hence, the entire issue would become an issue of interpretation. Moreover, the receipts have been duly recorded in the books of account and declared in the ST-3 returns also. Therefore, the issue is of interpretation and not of suppression with intention to evade Service Tax. Hence, invocation of extended period is not in accordance with law and must be quashed and set aside and relied upon following case laws:

- (a) Saurin Investments Pvt. Ltd. - 2009 (16) S.T.R. 446 (Tri.-Ahmd.)
- (b) Kamal Lalwani, - 2017 (49) S.T.R. 552 (Tri.-Del.)
- (c) Tally Solutions Pvt. Ltd. -2020 (7) TMI-555-CESTAT Bangalore.

4. In hearing, Shri Vikas Mehta, Consultant appeared on behalf of the Appellant and reiterated the grounds of appeal memorandum and sought one



*A*

8. I find that the Board has issued instructions to clarify that exemption contained under Serial No. 25(a) of Notification No. 25/2012-ST dated 20-6-2012, will cover a wide range of activities/services provided to a government, a local authority or a governmental authority. I reproduced relevant portion of the said Circulars, as under:

(i) Circular No. 199/9/2016-S.T., dated 22-8-2016 :

“4. The phrase “water supply” is a general phrase. Basically it will involve providing users, access to a source of water. The source may be natural or artificial like tanks, wells, tube wells etc. Providing users access to such a source will involve construction of the source (if artificial) and the transmission of water to the user. It will involve activities like drilling , laying of pipes, valves, gauges etc, fitting of motors, testing etc, so as to eventually result in the supply of water. Similarly the word plant has to be understood and interpreted with reference to the context. A plant for water supply need not necessarily involve a huge assembly of machinery and apparatus, for the reasons explained earlier.

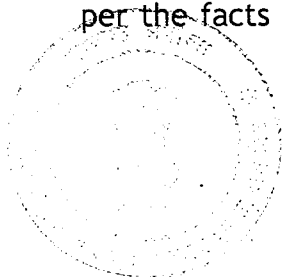
5. Thus the exemption under the entries at Serial No. 12(e) and 25(a) of Notification 25/2012-Service Tax, dated 20-6-2012, will cover a wide range of activities/services provided to a government, a local authority or a governmental authority and will include the activity of construction of tube wells.”

(ii) Circular No. 210/2/2018-S.T., dated 30-5-2018 :

“3.5 The phrase “public health” is a general term and will cover a number of activities which ensure the health of the public. In the Ministry of Health & Family Welfare’s reference, it has been stated that this activity of providing free ambulance services by the states is funded under the National Health Mission (NHM). One of the core values of the NHM enlisted by the Framework for implementation of National Health Mission (2012-2017) is to strengthen public health systems as a basis for universal access and social protection against the rising costs of health care. As a part of its goals, outcomes and strategies the framework has categorically stated that NHM will essentially focus on strengthening primary health care across the country. The Framework further states that assured free transport in the form of Emergency Response System (ERS) and Patient Transport Systems (PTS) is an essential requirement of the public hospital and one which would reduce the cost barriers to institutional care.

3.6 Thus the provision of ambulance services to State governments under the NHM is a service provided to government by way of public health and hence exempted under notification no. 25/2012-Service Tax, dated 20-6-2012.”

8.1 Vide above, the Board has clarified that ‘public health’ is a general term and will cover number of activities, including provision of ambulance service. As per the facts emerging from the records, the Appellant had provided drivers to

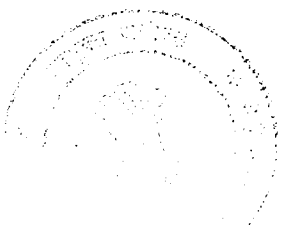


were to be directly provided by service providers to Government, local authority or a governmental authority in order to become eligible for exemption from payment of service tax under said entry. As per plain meaning of said entry, any service related to water supply, public health, sanitation conservancy, solid waste management etc. when provided to Government, local authority or a governmental authority become eligible for exemption in terms of Sl. No. 25(a) reproduced *supra*. The adjudicating authority erroneously came to conclusion that only those service which are directly provided to Government, local authority or a governmental authority become eligible for exemption ignoring that there is no such requirement in exemption notification No. 25/2012-ST dated 20.6.2012. It is a settled position of law that when meaning of taxing statute is clear and unambiguous, nothing should be added or omitted. I rely on the judgement of the Hon'ble Supreme Court passed in the case of Favourite Industries reported as 2012 (278) E.L.T. 145 (S.C.), wherein the Apex Court has held that,

“25. The notification requires to be interpreted in the light of the words employed by it and not on any other basis. There cannot be any addition or subtraction from the notification for the reason the exemption notification requires to be strictly construed by the Courts. The wordings of the exemption notification have to be given its natural meaning, when the wordings are simple, clear and unambiguous.”

7.2 I also rely on the judgement passed by the Hon'ble Supreme Court in the case of Commissioner of Customs Vs Dilip Kumar & Company reported as 2018 (361) E.L.T. 577 (S.C.), wherein it has been held that,

“19. The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the Legislature. In *Kanai Lal Sur v. Paramnidhi Sadhukhan*, AIR 1957 SC 907, it was held that if the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.

Government offices and Rajkot Municipal Corporation for use in public health service, I hold that the Appellant's case is duly covered under Sl. No. 25(a) of Notification No. 25/2012-ST dated 20-6-2012, as amended and the Appellant is eligible for exemption from payment of service tax.

11. I also find that services listed at entry at Sl. No. 25(a) of Notification No. 25/2012-ST dated 20-6-2012, as amended *supra* did not prescribe any condition in order to qualify for the exemption. Further, on interpreting the other services surrounded to term 'public health' in said entry, by applying the principles of *ejusdem generis*, it is apparent that none of the surrounding words mandated any conditions to be fulfilled in order to become eligible for exemption. Hence, the adjudicating authority erred in arriving at a conclusion that the Appellant was not eligible for exemption losing sight of the fact that 'public health' service appearing at Sl. No. 25(a) did not require any conditions to be fulfilled nor other surrounding services in the said entry. My views are supported by the decision rendered by the Hon'ble Rajasthan High Court in the case of MRF Ltd reported as 2009 (235) ELT 802 (Raj.), wherein it has been held that,

"8. ... .. The principles of *ejusdem generis* or *noscitur a sociis* are well settled principles of interpretation and the words of general and wider import used in an entry surrounded by other relevant terms has to draw its colour and meaning from such surrounding words and that cannot be lost sight of. Though this Entry No. 91 as such was not referred by any of the authorities below and discussed in detail as to whether the same would apply to the commodity in question or not but this being the only relevant entry regarding synthetic adhesives providing for 16% rate of tax and this being the only core question of law arising out of the order of the Tax Board and there being no other competing entry prescribing 16% rate of tax exercised on synthetic adhesive, this question can very well be decided in the present revision petitions and this Court is of the opinion that there is no need to remand the case back to the Appellate Courts below for this purpose. Thus, going by the aforesaid rule of interpretation, this Court is of the opinion that the learned Assessing Authority was not correct in applying 16% rate of tax on the commodity in question i.e. the vulcanizing solution with reference to Entry No. 91 of notification dated 27-3-1995 and the Appellate Authorities were justified in setting aside such additional tax, interest and penalty thereon though for different reasons."

(Emphasis supplied)

Rajkot Municipal Corporation and various Government offices, primarily in public health departments. Similarly, security guards were deployed at Government hospitals / public health centres to ensure smooth provision of public health service. If provision of ambulance service is considered as part of 'public health' and become eligible for exemption from service tax as clarified by the Board vide Circular dated 30.5.2018 *supra*, then supply of drivers has to be considered as part of health service, since without drivers no vehicles can be operated, whether it is ambulance or any other vehicles used by medical team/ support staff. I, therefore, hold that service provided by the Appellant by way of supplying drivers and security guards to Rajkot Municipal Corporation and other Government offices for use in public health service, will be covered under entry at Sl. No. 25(a) of Notification No. 25/2012-ST dated 20.6.2012.

9. Apart from above, if the interpretation of the adjudicating authority that only those services which were directly use for providing water supply, public health, sanitation conservancy, solid waste management etc are eligible for exemption under entry at Sl. No. 25(a) of Notification No. 25/2012-ST dated 20.6.2012 is sustained, then provisions contained in Sl. No. 25(a) *supra* would become redundant inasmuch as services listed therein i.e. water supply, public health, sanitation conservancy, solid waste management etc are generally provided by Government / local authority to public at large and no individual or firm can provide such service *en mass*. Hence, I am of the opinion that any service provided in relation to specified activities is also covered under entry at Sl. No. 25(a) *supra* and become eligible for exemption from payment of service tax.

10. Apparently the purpose of granting exemption from service tax under Sl. No. 25(a) is to prevent local authority from unnecessary tax burden. On the other hand, taxing Government or government authority would serve no purpose as tax will move from one pocket to another. Thus, it appears that intention of the legislature is to grant exemption to all services rendered to Government, local authority or a governmental authority in connection with specified activities i.e. water supply, public health, sanitation conservancy, solid waste management etc. in terms of Sl. No. 25(a) *supra* and also clarified by the Board vide Circulars dated 22.8.2016 and 30.5.2018 reproduced *supra*. Since, the impugned order has not disputed about supply of drivers and security guards to



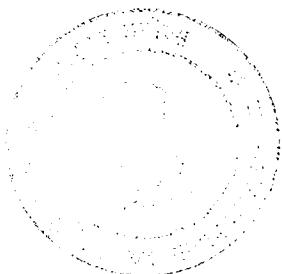


12. I have also examined the argument advanced by appellant on the point of limitation. The argument is three-fold, viz. (i) the issue involved is purely of interpretation (ii) ST-3 Returns were duly filed by them and (iii) there was no intention to evade Service Tax given the fact that service was provided to government only.

12.1 A plain reading of entry at Sl. No. 25(a) of the amended Notification No. 25/2012-ST dated 20.06.2012 would make it clear that none of the services enumerated therein, namely, water supply, sanitation conservancy, solid waste management or slum improvement and up-gradation, apart from public health that is at the center of dispute in this case, stipulate any qualification of the persons engaged in providing the said services. The exemption is pegged to service recipient, i.e. Government, a local authority or a governmental authority and does not seek to define or distinguish the core from the other non-core activities where both of them eventually contribute to achieve the stated objective. Therefore, to single out public health service that was undisputedly provided to service recipients specified in the exemption notification and seek to deny the exemption on the grounds stated in the impugned order is a matter of interpretation by the lower authority. This *per se* cannot result in invocation of extended period against the appellant. Further, the adjudicating authority has not denied the fact that the taxable value for computing the tax liability is based on ST-3 returns that were filed by the appellant from time to time and not from any private record/chits. There is no oral evidence against the appellant to suggest that they deliberately read the exemption wrongly to evade the tax.

12.2 I rely on the judgement passed by the Hon'ble Supreme Court in the case of Uniworth Textiles Ltd reported as 2013( 288) ELT 161 (S.C.), wherein it has been held that,

“12. We have heard both sides, Mr. R.P. Bhatt, learned senior counsel, appearing on behalf of the appellant, and Mr. Mukul Gupta, learned senior counsel appearing on behalf of the Revenue. We are not convinced by the reasoning of the Tribunal. The conclusion that mere non-payment of duties is equivalent to collusion or willful misstatement or suppression of facts is, in our opinion, untenable. If that were to be true, we fail to understand which form of



non-payment would amount to ordinary default? Construing mere non-payment as any of the three categories contemplated by the proviso would leave no situation for which, a limitation period of six months may apply. In our opinion, the main body of the Section, in fact, contemplates ordinary default in payment of duties and leaves cases of collusion or willful misstatement or suppression of facts, a smaller, specific and more serious niche, to the proviso. Therefore, something more must be shown to construe the acts of the appellant as fit for the applicability of the proviso.

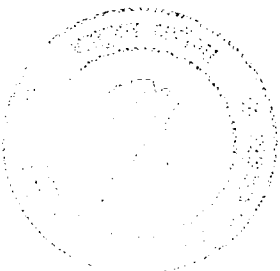
.. .

26. Hence, on account of the fact that the burden of proof of proving *mala fide* conduct under the proviso to Section 28 of the Act lies with the Revenue; that in furtherance of the same, no specific averments find a mention in the show cause notice which is a mandatory requirement for commencement of action under the said proviso; and that nothing on record displays a willful default on the part of the appellant, we hold that the extended period of limitation under the said provision could not be invoked against the appellant.

27. In view of the afore-going discussion, the appeal is allowed and the decisions of the authorities below are set aside, leaving the parties to bear their own costs.”

12.3 I find that the provisions of Section 28 of the Customs Act, 1962 are *pari materia* to Section 73 of the Finance Act, 1994 and hence, the aforesaid principle laid down by the Hon’ble Supreme Court must be applied and followed in the present case. Consequently, the appeal also succeed on the ground of limitation as well.

13. In view of above discussion, I hold that confirmation of service tax demand of Rs. 66,66,005/- is not sustainable on merits as well as on limitation and, therefore, required to be set aside and I do so. Since, demand is set aside, recovery of interest and penalty imposed under Sections 77 and 78 are also set aside.



week's time for filing additional submission.

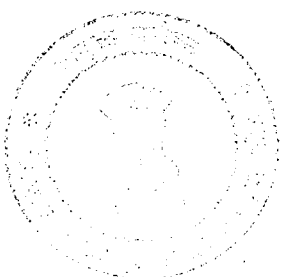
4.1 The additional submission was filed on 21.9.2020, wherein the grounds raised in appeal memorandum are reiterated and further contended that,

(i) They had claimed exemption from service tax vide entry at Sl. No. 25 (a) of Notification No. 25/2012-S.T., dated 20.06.2012; that none of the surrounding words, namely, water supply, sanitation conservancy, solid waste management or slum improvement and upgradation would identify or prescribe any conditions or qualifications of the personnel working to fulfil the afore-stated objectives to qualify for the exemption. The surrounding words (services) also do not distinguish between the integral, essential and indispensable versus others for the purpose of eligibility and relied upon decision of the Hon'ble Rajasthan High Court in the case of M. R. F. Ltd. - 2009 (235) E.L.T. 802 (Raj.).

(ii) That since none of the surrounding words contained any caveats to grant exemption, the exception meted out to "public health" service by Ld. Adjudicating Authority by way of injecting the caveat, does not conform to the legal principles cited by Hon'ble High Court in the aforesaid judgment, particularly when the service provided by the appellant were used in government run public health services only.

5. I have carefully gone through the facts of the case, the impugned order, appeal memorandum and submission made by the Appellant at the time of hearing as well as grounds raised in additional submission. The issue to be decided in the present appeal is whether the impugned order confirming service tax demand of Rs. 66,66,005/- under Section 73 and imposing penalty under Sections 77 and 78 of the Act are correct, legal and proper or not.

6. On going through the records, I find that the Appellant had supplied drivers and security guards to various Government offices and Rajkot Municipal Corporation for use in public health service during the period from April, 2014 to June, 2017 and claimed exemption from payment of service tax under Notification No. 25/2012-ST dated 20.6.2012. The adjudicating authority confirmed service tax demand on the ground that exemption provided under Notification No. 25/2012-ST dated 20.6.2012 was available only to those services which were directly connected with specified activity i.e. public health; that supply of drivers and security staff was in the nature of manpower supply



service, which was taxable.

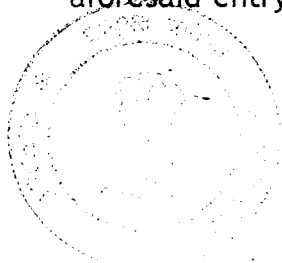
6.1 The Appellant has contended that the adjudicating authority has acknowledged that supply of drivers and security guards is a peripheral service which is ancillary in nature for providing the public health care activity by the Government hospitals; that the notification makes no distinction between the main or ancillary service when provided in connection with public health service; that none of the surrounding words of entry at Sl. No. 25 (a) of Notification No. 25/2012-S.T., dated 20.06.2012 prescribe any conditions or qualifications of the personnel working to fulfil the afore-stated objectives to qualify for the exemption nor it distinguish between the integral, essential and indispensable versus others for the purpose of eligibility of exemption and relied upon decision of the Hon'ble Rajasthan High Court in the case of M. R. F. Ltd. - 2009 (235) E.L.T. 802 (Raj.); that the issue is of interpretation and not of suppression with intention to evade Service Tax; that receipts have been duly recorded in the books of account and declared in the ST-3 returns also and hence, invocation of extended period is not in accordance with law and required to be quashed and set aside

7. I find that supply of drivers and security guards by the Appellant to various Government offices and Rajkot Municipal Corporation for use in public health service is not under dispute. Only objection raised in the present proceedings is that the Appellant is not eligible for exemption from service tax under Notification No. 25/2012-ST dated 20.6.2012, since the said service was not directly connected with public health. I find it is pertinent to examine the relevant entry appearing at Sl. No. 25(a) of Notification No. 25/2012-ST dated 20.6.2012 claimed by the Appellant, which is reproduced as under:

“25. Services provided to Government, a local authority or a governmental authority by way of -

“(a) water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation;”

7.1 I find that services provided to Government, local authority or a governmental authority by way of water supply, public health, sanitation conservancy, solid waste management etc. were exempted from service tax by virtue of above entry. I find that there is no phrase/word 'directly' used in the aforesaid entry. In other words, there is no such requirement that said services



14. In view of above, i set aside the impugned order and allow the appeal.

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

15. The appeal filed by the Appellant stand disposed off in above terms.

*Atth*  
(GOPI NATH) 01/10/2020  
Principal Commissioner(Appeals)

Attested

*(Signature)*

(V.T.SHAH)

Superintendent(Appeals)

By Regd Post AD

To, M/s. J.K. Securities & Consultancy, 103, Sagar Arcade, Opp. Gurukul, Gondal Road, Rajkot.	सेवा में, मैसर्स जे. के. सेक्यूरिटीस अँड कंसल्टेंसी, 103, सागर आर्केड, गुरुकुल के सामने, गोंडल रोड, राजकोट।
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प्रतिलिपि :-

- 1) प्रधान मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट, को आवश्यक कार्यवाही हेतु।
- 4) गार्ड फ़ाइल।

