



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



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

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रजिस्टर्ड टाक ए.डी. द्वारा

DIN-202212645X0000666ACF

क	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक/Date
	V2/75/BVR/2022	BHV-EXCUS-000-JC-LD- 018-2021-22	03-03-2022

अपील आदेश संख्या (Order-In-Appeal No.):

BHV-EXCUS-000-APP-123-2022

आदेश का दिनांक / Date of Order:	23.12.2022	जारी करने की तारीख / Date of issue:	27.12.2022
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श्री शिव प्रताप सिंह, आयुक्त (अपील), राजकोट द्वारा पारित /
Passed by Shri Shiv Pratap Singh, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर एवं सेवाकर, राजकोट / जामनगर / गांधीधाम द्वारा उपरलिखित जारी मूल आदेश से सृजित: /

Arising out of above mentioned OIO issued by Additional/Join/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. Bhaveshbhai Bachubhai Rajyaguru, Near Post Office, Station Road, Madhak Sheri, Gujrat-364710

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

(A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर 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 सम्बंधित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर के पुरम, नई दिल्ली, को की जानी चाहिए /

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

(ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेम्) 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, 2nd 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) नियमावली, 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, 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 सहायक रजिस्टार 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/- 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.5,000/-, 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/-

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 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 प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया 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 सहायक रजिस्टार 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/- 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 fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs or less, Rs.5000/- 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 88 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 प्रपत्र S.T.-7 में की जा सकेगी 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 उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। /

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For 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, बशर्त 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 है

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

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ी एवं अपील को लागू नहीं होंगे।।

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 को पुनरीक्षण आवेदन :**
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35एड के प्रथमपरतुक 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 proviso 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 छुट (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 an 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) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो छूटी केडीट 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 संप्रेषण 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-एड के तहत निर्धारित शुल्क की अदायगी के साक्ष्य 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, 1944, under Major Head of Account.

- (vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रूपये से ज्यादा हो तो रूपये 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 दंग से किया जाना चाहिए। इस तथ्य के हतु तब भी की लिखा पदों काय 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 Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if existing Rs. 1 lakh fee of Rs. 100/- for each.

- (E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकट 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.

जब अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट 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.



:: अपील आदेश / ORDER-IN-APPEAL ::

M/s. Bhaveshbhai Bachubhai Raiyaguru, Botad (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. BHV-EXCUS-000-JC-LD-018/2021-22 dated 03.03.2022 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST, Bhavnagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that the Income Tax Department shared the third party information/ data based on Income Tax Returns/ 26AS for the Financial year 2015-16, & 2016-17 of the Appellant. Letters dated 31.07.2020 & 18.08.2020 were issued by the Jurisdictional Range Superintendent requesting the Appellant to provide information/documents viz. copies of I.T. Returns, Form 26AS, Balance Sheet (including P&L Account), VAT/ Sales Tax Returns, Annual Bank Statement, Contracts/ Agreements entered with the persons to whom services provided etc. for the Financial year 2015-16, 2016-17 & 2017-18 (upto June-2017). However, no reply was received from the Appellant. Further, as per data available with the Department on ACES, it was observed that the details of Service Tax returns filed by the Appellant were not available in the system.

3. In absence of data/information, a show cause notice dated 28.12.2020 was issued to the Appellant, demanding Service Tax and cess to the tune of Rs. 1,10,50,739/- under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act') alongwith interest under Section 75, penalties under Section 77(1)(c), 78 and 77(2) of the Act.

4. The adjudicating authority vide the impugned order confirmed Service Tax demand of Rs. 1,10,50,739/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs. 1,10,50,739/- under Section 78 of the Act, and penalty of Rs. 10,000/- each under Section 77(2) and 77(1)(c) of the Act.

5. Being aggrieved, the Appellant has preferred the present appeal on various grounds that the Joint Commissioner has grossly erred in passing the order and confirming by ignoring the details of nature of its activities furnished by them. The nature of service considered in the Show Cause Notice and in the final order is without any basis merely on whims, assumptions and without any evidence. The activities carried upon by them fall within the mega exemption Notification No. 25/2012-Service Tax dated 20.06.2012.

6. CA Shri Kunj Shah, CA Shri Pankaj Soni and Shri Sandeep Belani, Accountant for Appellant appeared for personal hearing before me and reiterated the submissions made in the appeal. They submitted that they are

providing road construction service to local Government authority which is exempt under the Mega Exemption Notification No. 25/2012-Service Tax. The adjudicating authority had rejected their contention erroneously stating lack of supporting documents regarding their claim. They have enclosed the same with their appeal. They further undertook to submit a detailed note with relevant documents within a week. They requested to set aside the Order-In-Original in view of above.

6.1 The Appellant vide their letter dated 16.11.2022, received by this office on 22.11.2022, have submitted the additional reply, wherein they stated that they are carrying on activities under the name and style of M/s. Maruti Construction and are engaged in providing construction, erection commissioning, installation, fitting out, repair and maintenance etc. During the period under dispute, they had carried on different activities with the different contractors and engaged in construction of roads for use by general public and they submitted copies of agreement with different organisations/ municipalities. They stated that their activities are exempted vide clause 12, 13, 25 and 29 of the mega exemption Notification No. 25/2012-Service Tax dated 20.06.2012. They have also submitted detail of work contract as per Annexure-1 alongwith copies of work orders, running account bills etc.

7. I have carefully gone through the case record, impugned order and appeal memorandum filed by the Appellant. I find that Show Cause Notice had been issued without verifying any data or nature of services provided by the Appellant as the same had been issued only on the basis of data received from the Income Tax department. It has been held by the Adjudicating Authority that the service provided by the Appellant is a taxable service in absence of information/documents which were to be submitted by them as assured during personal hearing held on 17.02.2022. The Adjudicating Authority also held that in negative list based taxation, all the services except those listed in negative list shall be liable to Service Tax. The Appellant's activity of construction related services, which were not in negative list of services under Section 66D of the Act, are taxable as per definition of 'taxable service' under Section 65B (51) of the Act. The Appellant on the other hand, has stated that they are providing road construction service to local Government authority which is exempt under the Mega Exemption Notification No. 25/2012-Service Tax. The adjudicating authority has rejected their contention stating lack of supporting documents regarding their claim.

8. On perusal of the copy of Form 26AS and the copies of works orders as well as RA Bills for the year 2015-16 submitted by the Appellant, it is found that they have provided the services to their customers as mentioned below:



Sr. No.	Nature of work	Services provided to
01	Construction work of cement concrete re-carpet roads @ botad ward No. 2 & 7	Botad Nagar Palika
02	Providing & laying rubber moulded paver blocks on footpath @ Botad	--do--
03	Drainage line in road package @ Botad	--do--
04	Providing & laying rubber moulded paver blocks on footpath @ Botad	--do--
05	Supply of various size S.R.F.C. manhole cover with frame	--do--
06	Providing & laying rubber moulded paver blocks on footpath @ Botad	--do--
07	Construction work of cement concrete re-carpet roads @ botad ward No. 1 & 2	--do--
08	Providing & laying underground drainage line @ various places in Botad ward No. 1, 3 & 5	--do--
09	--do--	--do--
10	Construction work of cement concrete re-carpet roads @ botad ward No. 1 & 7	--do--
11	Providing, lowering, laying & jointing D.I. Pipe lines with all civil works at Botad	--do--
12	Construction work of cement concrete re-carpet roads @ botad	--do--
13	Supply of various size S.R.F.C. manhole cover with frame	--do--
14	Cleaning of E.S.R. & water Sumps with goods & labour	--do--
15	Providing & laying rubber moulded paver blocks on footpath @ Botad	--do--
16	Cleaning of E.S.R. & water Sumps with goods & labour	--do--
17	Providing & laying underground drainage line @ various places in Botad ward No. 1 & other	--do--
18	Cleaning of E.S.R. & water Sumps with goods & labour	--do--
19	--do--	--do--
20	RCC Cement concrete flooring work Palitana Depot of Bhavnagar Division of Gujarat State Road Transport Corporation	Gujarat State Road Transport Corporation, Bhavnagar
21	Construction of crematorium at Limbadi	Limbadi Nagarpalika
22	Construction of RCC Road at ward No. 1/8 Mahuva Nagarpalika (SJMSVY)	Mahuva Nagarpalika
23	Sub contract work to main contractor M/s. Maruti Infrastructure, Dhasa pertaining to work of providing & laying under ground drainage line at Botad	Sub-contracting work
24	Sub contract work to main contractor M/s. PMP Infratech Pvt. Ltd. pertaining to work of construction of cement concrete road at Botad	--do--
25	Widening and strengthening of road & construction of RCC Road in various areas of	Sanand Nagarpalika

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	Sanand Nagarpalika	
26	Repairing work of toilet block of APMC, Botad	APMC, Botad
27	Annual maintenance of Kaniyad Irrigation project, Executive Engineer, Irrigation Department, Botad	Irrigation department, Gujarat Government

9. Likewise, on perusal of the copy of Form 26AS and the copies of works orders as well as RA Bills for the year 2016-17 submitted by the Appellant, it is found that they have provided the services to their customers as mentioned below:

Sr. No.	Nature of work	Services provided to
01	Laying of drainage line in road package	Botad Nagar Palika
02	Construction work of CC road in diamond park Society at Botad	--do--
03	Construction work of Cement Concrete roads under SJMMSVY UDP for Botad Nagar palika	--do--
04	Lowering & jointing PVC Pipeline	--do--
05	Drainage line in road package and housing board area	--do--
06	Underground drainage line work	--do--
07	Construction of compound wall around dasnam goswami Samadhi sthan @ botad	--do--
08	Construction work of CC road in Diamond Park society Botad	--do--
09	Lowering, laying & jointing drainage line/ Providing & laying rubber moulded paver blocks on footpath	--do--
10	Construction work of Cement Concrete Roads for Botad Nagar Palika	--do--
11	--do--	--do--
12	Providing & Laying rubber moulded paver blocks on footpath @ Botad	--do--
13	Providing & laying underground drainage line in different societies @ Botad	--do--
14	Supply of manhole cover with frame	--do--
15	Road repairing work at GSRTC, Bhavnagar	GSRTC, Bhavnagar
16	Annual maintenance work of dam	Executive Engineer, Bhavnagar irrigation project division
17	Road work	Bhavnagar Municipal corporation
18	Sub-contract work for providing & laying underground drainage line botad	Maruti Infrastructure, Dhasa sub-contract work
19	Sub-contracting work of construction of cement concrete roads at Botad	PMP Infratech Pvt. Ltd. sub-contract work
20	Construction of Cement Concrete road at Sanand nagarpalika area	Sanand Nagarpalika
21	Sub-contracting work of RCC road at Botad	Veer Infratech sub-contract

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Nagarpalika area	work
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On plain reading of the above mentioned documents and nature of services provided by the Appellant, it is clear that the Appellant had provided services to government, local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of pipeline, conduit or plant for water supply or water treatment or sewerage treatment, road and services as a sub-contractor providing services by way of works contract to main contractor providing works contract services which are exempt.

10. It is the contention of the Appellant that they are providing services to local government authorities directly and through main contractor and their service is exempted by virtue of Sr. No. 12, 13, 25 & 29(h) of Mega Exemption Notification No. 25/2012-Service Tax dated 20.06.2012, as amended. The relevant provisions are re-produced below:

"Notification No. 25/2012-Service Tax dated- 20th June, 2012, as amended.

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

*(a) ****

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

*(c) ****

(d) canal, dam or other irrigation works;

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

*(f) *** "*

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

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

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 upgradation; or

(b) repair or maintenance of [a vessel];

29. Services by the following persons in respective capacities -

*(a); (b); (c) ****; (d) ****; (e) ****; (f); (g); (ga); (gb);*

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;"

Signature

11. I find that the Appellant has provided service by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of road, pipeline for water supply and sewerage treatment directly to the government, local authority or a governmental authority. They have also provided the said services under the capacity of Sub Contractor to Main contractors, who are providing the services to the Government or Local authority. All the services provided directly and through sub-contractor to Main contractors who in turn provide the same to the Government or Local authority are falling under the definition of exemption under various clauses of Mega Exemption Notification No.25/2012-Service Tax. I also find that the Appellant has provided the work contract services under the capacity of Sub-contractor to the main contractors which are exempt in view of clause 29(h) of Notification No. 25/2012-ST. Further, the Appellant has also provided the services directly to the Government of Gujarat by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of irrigation works, pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.

12. Thus, on conjoint reading of the Clause 12(d), 12(e), 13(a), 25(a) and 29(b) of Mega Exemption Notification No. 25/2012-Service Tax, I find that main contractor is providing the works contract service which is exempted, then sub-contractor supplying the works contract service to the main contractor also comes under the purview of the exempted category. Further, services provided directly to the Government, local authority or a governmental authority are also exempted from the Service Tax. Therefore, the Appellant is not liable to pay any Service Tax on such services and question of interest or penalty does not arise.

13. In view of discussions and finding, I set aside the impugned order and allow the appeal filed by the Appellant.

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

14. The appeal filed by Appellant is disposed off as above.


 (शिव प्रताप सिंह)/(Shiv Pratap Singh),
 आयुक्त (अपील)/Commissioner (Appeals)

By R.P.A.D.

To, M/s. Bhaveshbhai Bachubhai Rajyaguru, Near Post Office, Station Road, Madhak Sheri, Botad- 364710.	सेवा में, मे. भावेशभाई बचूभाई राजयगुरु, पोस्ट ऑफिस के पास, स्टेशन रोड, मादक शेरी, बोटाद - 364710।
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प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जमावारा हेतु।
- 2) आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेतु।
- 3) अपर आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर को आवश्यक कार्यवाही हेतु।
- 4) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, भावनगर-1 मण्डल को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फ़ाइल।

