

ः आयुक्तः (अपील्स) का कार्यालय , वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्कःः O/O THE COMMISSIONER (APPEALS), GST & CENTRAL EXCISE,

द्वितीय तल, जी एस टी भवन / '2™ Floor, GSTBhavan, रेस कोर्स रिंग रोड, / Race Course Ring Road,



<u>राजकोट / Rajkot – 360 001</u>
Tele Fax No. 0281 – 2477952/2441142Email: commrappl3-cexamd@nic.in

रजिस्टर्डडाकए.डी. द्वारा :-

DIN-20221164SX0000999D49

क् बपील / फाइससंख्या/ Appeal /File No.

V2/525 /RAJ/2021

मूलकादेशमं / OlO No. दिनांक/ Date

23/JC(MAN)/2021-22

30-09-2021

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

RAJ-EXCUS-000-APP-356-2022

आदेश का दिनांक /

28.10.2022

श्री शिव प्रताप सिंह, अयुक्त (अपील्स), राजकोट द्वारा पारित /

जारी करने की तारीख /

02.11.2022

Date of Order:

Date of issue:

Passed by Shri Show Pratap Singh, Commissioner (Appeals), Rajkot.

ग अपर आयुक्त / संयुक्त आयुक्त / उपायुक्त / सहायक आयुक्त , केन्द्रीय उत्पाद शुल्क / सेवाकर /वस्तु एवंसेवाकर , राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित : / 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 ए र पता / Name & Address of the Appellant & Respondent :-

M/s. N.J.Construction, Vrujdham, Lal Bahadur Society, Street No. 3, Plot No. 10B, Dhebar Road (South), Opp. Jakat Naka, Rajkot

इस आदेश(अपील) से व्यक्ति कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दावर 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 शुक्क एवं सेवाकर अपीलीय त्यायाधिकरण के प्रति अपील,केन्द्रीय उत्पाद शुल्क अधिनियम , 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम , 1994 की धारा 86 के अंतर्गत निम्नतिखि+त जगह की जा सकती है।/

Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 85 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, 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 अपीलें सीमा शुल्क,केंद्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, दितीय रूल, बहुमाली भवन असावा अहमदाबाद- ३८००१६को की जानी चौहिए।/

To the West regional Lench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in case of appeals other than as mentioned in para-I(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 प्रतिकः। ये दर्ज किया जाना चालिए। इनमें से कम से कम एक प्रति के लाख, जहां उत्पाद शुल्क की माँग ,क्याज की माँग और लगाया गया जुमीना, रुपए 5 लाख था उससे कम 5 लाख रुपए पा 50 लाख रुपए तक अच्चा 50 लाख रुपए से अधिक है तो कम्मा: 1,000/- रुपये क्रिया 10,000/- रुपये का निर्धारित जमां शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का मुमतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्विजनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक द्वारा किया जाना चाहिए। संबंधित ब्राप्ट का मुगतान, बैंक की उस शाखा में होता चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑडर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होना।/

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/-.

(B) अपीलीय न्यायाधिकरण के समक्ष अपील, विस्त अधिनियम, 1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में चार इतियों में की जा सकेगी 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 मौग जीर लगाया गया जुमाना, रुपए 5 लाख वा उससे कम, 5 वाब क्यए था 50 लाख कपए तक अध्वा 50 लाख रुपए से अधिक है तो कमशः 1,000/- रुपये, 5,000/- रुपये अधा 10,000/- रुपये का निर्धारित जमा शुक्त की प्रति संलग्न करें। निर्धारित शुक्त का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रिजेस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक द्वारा किया जाना चाहिए। संबंधित हाफ्ट का मुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थयन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुक्क जमा करना हागा।/

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 of 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, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs, Rs.10,000/- where the bench of Tribunal is a structure of the bench of the bench of Tribunal is a structure. Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

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अपील्स

- वित्त अधिनियम,1994की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेज़कर नियमवाली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-? में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुक्क अपवा अयुक्त (अपील), केन्द्रीय उत्पाद शुक्क हारा पारित आदेश की प्रतियों संलग्न के पाय प्रिक्त के प्रतियों संलग्न के प्रतियों संलग्न अपवा उपायुक्त, केन्द्रीय उत्पाद शुक्क होता पारित आदेश की प्रतियों संलग्न अपवा उपायुक्त, केन्द्रीय उत्पाद शुक्क (अपवा प्रतियों संलग्न करनी होगि। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be liked 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. (i)
- Commissioner of Central Excise/ Service Tex to file the appeal before the Appellate Tribunal.

 सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1994 की धारा 83 के अंतर्गत सेवाकर को भी शांचु की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क शेंसा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुमीन: विवादित है, या जुमीना, जब केवल जुमीना विवादित है, का मुगवान किया जाए, वधारे कि इस धारा के अंतर्गत लगा कि जाने वाली अपेक्षित देय राशि दश करोड़ रुपए से अधिक न हो।

 केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत लगा कि जाने वाली अपेक्षित देय राशि दश करोड़ रुपए से अधिक न हो।

 केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत लगा कि जाने वाली अपेक्षित देय राशि है।

 (ii) सेववेद जमा कि मी मई गलत राशि

 (iii) सेववेद जमा कि मा गई होते।

 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:

 (ii) amount determined under Section 11 D;

 (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.

 Futa सकार केन्द्रनरिकच क्रवेवन: (ü)

- मारत सरकार कोपूनरीक्षण कावेबन :
 Revision application to Government of India:
 इस आदेश की पूनरीक्षण व्यवस्था निम्नासिक्षत मामलों में केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की क्षारा 35EE के प्रथमपूरंतक के अंतर्गतअवर संविध, भारत सरकार, पुनरीक्षण आवेबन इकाई, वित्त मंत्रालय, राजस्य विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, की किया जाना चाहिए।

 A revision application lies to the second of the (C) बाता चाहर। / 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 Deini-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:
- यदि मास के किसी नुकक्षान के मामने में, जहां नुकसान किसी माल को किसी कारखाने से शंहार गृह के पारबनन के दौरान या किसी अन्य कारखाने था फिर किसी एक शंहार गृह से दूसरे शंहार गृह पारगमन के दौरान, या किसी शंहार गृह में या शहारच में माल के श्रवस्करच के दौरान, किसी कारखाने या किसी शहार गृह में मान के नुकक्षान के बामने 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 (i)
- भारत के बाहर किसी राष्ट्र ना क्षेत्र को निर्यात कर रहे मान के विनिर्माण में प्रयुक्त कहे मास पर भरी नई केन्द्रीय उत्पाद सुन्क के छुट (रिवेट) के मामने में, प्राप्त के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी हैं। / 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. (ii)
- (iii)
- material used in the manufacture of the goods which are exported to any country or territory outside India.

 यदि उत्पाद शुल्क का भुगवान किए बिना भारत के बोहर, नेपास या भूटान को मास निर्वाद किया गया है। / ।

 In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

 स्निक्षित उत्पाद के उत्पादन शुल्क के भूपतान के लिए जो अपूरी केहीई इस बिनियम एवं इसके निषिष्ठ प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जी आयुक्त (अपीस) के द्वारा वित्त बाधिनियम (न॰ 2), 1998 की आरा 109 के द्वारा नियत की गई तारीब अथवा समायाविधि 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. (iv)
- उपरोक्त आवेदन की दो प्रतियां प्रपत्न संक्या EA-8 में, जो की केन्द्रीय उत्पादन सुन्क (अपील) नियमायमी 2001, के नियम 9 के अंतर्गत बिनिर्दिष्ट है, इस अदेश के संप्रथण के 3 माइ के अंतर्गत की जानी बाहिए। उपरोक्त आवेदन के साथ पूल आदेश के अदेश की दो प्रनिया संसम्र की जानी बाहिए। साथ ही केन्द्रीय उत्पाद सुन्क अधिनियम; 1944 की सारा 35-EE के तहत निर्धारिस सुन्क की अदावगी के साव्य के तौर पर TR-6 की प्रति संलग्न की जानी बाहिए। / 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. (v)
- पनिश्विष आवेदन के साथ निम्नलिक्षित निधारित शुल्क की अदायमी की जानी चाहिए। जहां संलग्न रकम एक लाख रूपये या उससे कम हो तो रूपये 200/- का भुगतान किया आए और बंदि 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. (vi)
- यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का मुगतान, उपर्युक्त देन से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यचास्थित अभिवित्र तथा किया अपने वा केद्रीय सरकार को एक आवेदन किया जाता हैं। In case if the order covers variousnumber of order or or order or order covers variousnumber, or of order, in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the orie appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each. (D)
- वधासंत्रोधित न्यायासन शुस्क अधिनिवम, 1975, के अनुसूची-। के अनुसार मूल आदेश एवं स्थान अदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायांत्रय शुस्क टिकिट नगी 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. (E)
- सीमा शुरूक, केन्द्रीय जुत्पाद शुरूक एवं सेवाकर अपीलीव न्यांयाधिकरण (कार्य विधि) निवमावली, 1932 में वर्णित एवं बन्ध संवन्धित मामलों को सम्मितित करने वासे निवमों की और भी ध्यान आकर्षित किया जाता है। / Attention is also invited to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982. (F)
- उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित क्यापक, विस्तृत और नदीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbcc.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.cbcc.gov.in (G)



अपील अदिश /ORDER-IN-APPEAL

M/s N.J. Construction, Vrujdham, Lal Bhadur Society, Street No.3, Plot No.10B, Dhebar Road (South), Opp. Jakat Naka, Rajkot (hereinafter referred to as 'Appellant') has filed Appeal No. V2/525/RAJ/2021 against Order-in-Original No. 23/JC(MAN)/2021-22 dated 23.09.2021 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central Excise & CGST, Rajkot (hereinafter referred to as 'adjudicating authority').

- 2. The facts of the case, in brief, are that as per data received from the Income Tax Department, the appellant appeared to have received various amounts as consideration for providing taxable service. It appeared that the appellant had not obtained registration under Service Tax Rules and did not pay service tax on the consideration received for providing taxable service. The appellant, in spite of being asked by the jurisdictional officer, did not produce any details or information about the nature of service provided by them.
- 2.1 Based on the data provided by the Income Tax department, a Show Cause Notice No. V.ST/Div-I/JC/AS/14/2020-21 dated 28.09.2020 was issued to the Appellant calling them to show cause as to why the value of taxable services provided by them during the period F.Y. 2014-15, 2015-16 and 2016-17 should not be assessed/determined at Rs.6,66,78,336/- under Section 72 of the Finance Act, 1994 and service tax amount of Rs. 93,23,820/- should not be demanded and recovered from them under proviso to Section 73(1) of the Act, along with interest under Section 75 of the Act, and proposing imposition of penalty under Sections 77 and 78 of the Act.
- 2.2 The above Show Cause Notice was adjudicated vide the impugned order whereunder the adjudicating authority dropped the demand for Rs.87,60,653/-and confirmed the demand of Rs.5,63,653/- under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Act. He also imposed penalty of Rs:5,63,653/- under Section 78 and Rs. 10,000/- under Section 77(1)(a), Rs. 10,000/- under Section 77(1)(c) and Rs.10,000/- under Section 77(2) of the Finance Act, 1994.
- 3.1 Being aggrieved, the Appellant has filed the present appeal contending, inter alia, that the service tax demanded in the order of Rs.5,19,465/- was on the allegation that the construction of Box Culvert is separate civil structure and hence service tax is leviable. The appellant submitted that Box Culvert constructed are attached to the road and is going to be used for road transportation and as per rule of classification, box culvert should be at par with brings only. The appellant submitted that as per Section 4 of the National

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Highways Act 1956, highways include culverts.

- 3.2 The appellant submitted that service tax demand of Rs.44,188/- on alleged unexplained income of Rs.2,94,584/- was due to negligence on the part of adjudicating authority as he has not referred to the audit report as well as reconciliation submitted by the appellant on 01.10.2020. The appellant submitted that the difference is other income derived in the form of interest as mentioned in Schedule XIV of Audit Report of FY-16-17. The appellant submitted that no interest is payable and no penalty is imposable for the reason that demand of service tax is not sustainable.
- Personal hearing was held on 12.10.2022 when Shri Ravi Tanna, Chartered Accountant, appeared on behalf of the Appellant. He reiterated the submission made in Appeal Memorandum. He drew attention to the definition of Highways as per Section 4 of the National Highways Act, 1956 which mentions that highways include culverts and contended that their work order specifically undertook to submit Hе highways. for state mentioned culverts diagrams/photographs of the said culverts post hearing. He also contended that the unexplained income mentioned in the order of adjudicating authority was actually interest on the Fixed Deposits. He undertook to submit extracts of the audit report, form 26AS, bank statement etc., in this regard. Based on these contentions he requested to drop the demand, interest and penalty.
- 4.2 Vide letter dated 15.10.2022, the appellant submitted copies of work orders of R & B Porbandar, R & B Junagadh and photographs of box culverts, extracts of the audit report, form 26AS and bank statement.
- 5. I have carefully gone through the facts of the case, the impugned order, grounds of appeal in the appeal memorandum and oral as well as written submissions made by the Appellant. As per the facts available on record, the demand was made on the on the basis of data provided by the Income Tax department. Though the documents related to the income shown in the returns of Income Tax department were called for by the jurisdictional CGST officer, the appellant did not provide them. However, the appellant has submitted the documents at the time of adjudication. From the work order, the adjudicating authority found that the appellant had provided construction services to the Government/local authority and provided services viz. construction of road, bridge, box culvert, slap, Fire Brigade Station. The adjudicating authority has observed that the service provided by appellant were exempted. However, the adjudicating authority has held that box culvert' is unique 'civil structure' and cannot be termed as part of the road or bridge and hence confirmed the demand of service tax to the extent of service provided in respect of construction of box





culvert'. The adjudicating authority has also confirmed the demand of service tax to the tune of Rs.44,188/- on unexplained income of Rs.2,94,584/-. Thus issue to be decided in this case is whether the impugned order, in the facts and circumstances of the case, confirming the demand against the service of construction of box culvert' and 'unexplained income' with penalty is legal and proper.

- 6. The contention of the appellant, in this regard, is that 'Box Culvert' constructed are attached to the road and is going to be used for road transportation and as per rule of classification, box culvert should be at par with bridge only. The appellant submitted that as per Section 4 of the National Highways Act 1956, highways include culverts. In this regard, I find that, the adjudicating authority has not given any valid reason for not considering 'box culvert' as part of road. On the contrary, Section 4 of the National Highway Act, 1956 considered bridges, culverts, tunnels, causeways, carriageways and other structures constructed on or across highways as 'highways'. Section 4 of the National Highway Act, 1956 reads as under:
 - "4. National highways to vest in the Union.—All national highways shall vest in the Union, and for the purposes of this Act "highways" include—
 - (i) all lands appurtenant thereto, whether demarcated or not;
 - (ii) all bridges, culverts, tunnels, causeways, carriageways and other structures constructed on or across such highways; and
 - (iii) all fences, trees, posts and boundary, furlong and milestones of such highways or any land appurtenant to such highways."
- 7. From the above, it is evident that culverts are considered as integral part of highways under National Highway Act. 1956. Even the dictionary meaning of culvert reads as 'a drain or channel crossing under a road, sidewalk, etc.' (Dictionary.com)'. As such, I am of the considered view that culverts are parts of road and the service provided by constructing 'box culvert' can be considered as service provided in respect of construction of road which is exempted as per Sr. No.13(a) of Notification No.25/2012-ST. Further, the work order is specifically for construction of 'box culvert on Thoyaba-Jamby Kerala-Badopar Road and Manavadar Jilna Buri Road'. Thus, it transpires that the work carried out by the appellant by way of construction of 'box culvert' is to be considered as a part of road and hence eligible for exemption per Sr. No.13(a) of Notification No.25/2012-ST.
- 8. Regarding the confirmation of demand of service tax on unexplained income amount of Rs.2.94 584/-, I find that the adjudicating authority has failed to correlate or establish the said amount as a consideration in respect of any service provided by the appellant. On the contrary, the appellant has submitted unexplained income of Rs.2,94,584/- was towards receipt of interest. I

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also find that the appellant has submitted a reconciliation statement and copy of balance sheet, audit report etc. before the adjudicating authority. On perusal of the said reconciliation statement and profit and loss account, I find that the income of Rs.2,94,584/- in 2016-17 was towards interest income and hence not taxable. Thus, the impugned order to the extent of confirming the demand of service tax is not sustainable on merits. As the demand is not sustainable, there is no question of charging interest and imposing penalty in this regard.

- In view of the above, I allow the appeal and set aside the demand of service 9. tax of Rs.5,63,653/-, with entire penalty under Section 78, Section 77(1)(a), Section 77(1)(c) and Section 77(2) of the Finance Act, 1994 imposed on the appellant by the adjudicating authority.
- अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है। 80.
- The appeal filed by the Appellant is disposed off as above. 10.

सत्यापित / Attested

Superintendent

Central GST (Appeals) By R.P.A.D. Rajkot

(शिव प्रताप सिंह/ SHIV PRATAP SINGH) आयुक्त (अपील)/Commissioner (Appeals)

सेवा में. मे॰ एन। जे कन्स्ट्रकशन वजधाम, लाल बहादुर सोसाइटी, स्ट्रीट No.3, प्लॉट नो.10**बी** ढेबर रोड, (साउथ) ओप्प। जकात नाका, राजकोट

Τo M/s N.J. Construction, Vrujdham, Lal Bhadur Society, Street No.3, Plot No.10B, Dhebar Road (South), Opp. Jakat Naka, Ŕajkot

प्रतिलिपि:-

- 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
- ऊप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट 📲 मंडल, राजकोट आयुक्तालय, को आवश्यक कार्यवाही हेतु। गार्ड फ़ाइल।

