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ः : आयुक्त (अपील्स) का कार्यालय , वस्तु एवं सेवा करऔर केन्द्रीय उत्पाद शुल्कः: 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,



Tele Fax No. 0281 - 2477952/2441142Email: commrappl3-cexamd@nic.in



रजिस्टर्डहाकए.डी. द्वारा :-

DIN-202301648X0000466002

जपील / फाइलसंख्या/ Appeal /File No. मूलआदेशनं / OlO No.

दिनांक/

Date

V2/46/RAJ/2022

54/JC(MAN)/2021-22

14-02-2022

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

RAJ-EXCUS-000-APP-402-2022

आदेश का दिनांक /

27.12.2022

जारी करने की तारीख /

03.01.2023

Date of Order:

27.12.2022

Date of issue:

ट द्वारा पारित /

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

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

र्ण अपर आयुक्त / संयुक्त आयुक्त / उपायुक्त / सहायक आयुक्त , केन्द्रीय उत्पाद शुल्क / सेवाकर /वस्तु एवंसेवाकर , राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से मृजित : /

Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

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

M/s. Shreejikrupa Project Limited, 206-Krishana Complex, Rajnagar Chaowk, Nana Mava Main Road, Rajkot.

इस आदेश(अपीन) से व्यक्ति कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के ममक्ष अपीन 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 विश्त अधिनियम , 1994 की धारा 86 के अंतर्गत निम्नलिखि+त 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 अपीसीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक न 2, आर॰ के॰ पुरेस, 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, द्वितीय तल, बहुमाली भवन असावी अहमदाबाद- ३८००१६को की जानी चाहिए।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2™ Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016in case of appeals other than as mentioned in para-1(a) above

(iii) अपीलीय न्यायाधिकरण के समझ अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावसी, 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 मौग, क्याज की मौग और लगाया गया जुमाना, रुपए 5 लाख का अससे कम, इ. तलाख रुपए या 50 लाख रुपए तलाख रुपए से 50 लाख रुपए से 5000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का मुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रिज़स्ट्रार के नाम से किसी भी सार्वजिनक क्षेत्र के बंद द्वारा जारी रेखांकित बँक ब्रास्ट द्वारा किया जाना चाहिए। संबंधित ब्रास्ट का भुगतान, बँक की उसे शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थमन आदेश (स्टे ऑडर) 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 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 layour 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 stay shall be accompanied by a fee of Rs. 500/-.

अपीलीय त्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपन्न 8.7:-5में चार प्रतियों में की जा सकेती एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में मंसप्र करें (उनमें में एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माँग , क्यांज की माँग और लगाया गया जुमीना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तुक अथवा 10,000/- रुपये अधिक है तो कमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का मुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के महायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित ब्राम्ट का भगतान, बैंक की उस शाखा में होना चाहिए। जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-एन के माँथ 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 fees of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-



(B)

- विश्त अधिनियम, 1994की 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 प्रपन्न S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अधवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क हारा पारित आवेश की प्रतियों संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त हारा सहायक आयुक्त अधवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेश्वर वर्ज करने को निर्देश देने वाले अर्थ 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)
- (ii)

- बशर्ते युद्ध कि इम् धार् के प्रावधान वित्तीय (सं• 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन

- बशर्ते यह कि इम धारा के प्रावधान वित्तीय (मं॰ 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थमन अर्जी एवं अपील को लागू नहीं होगे।/
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.

- मारत सरकार कोपुनरीक्षण अपेवन :

 मारत सरकार कोपुनरीक्षण अपेवन :

 प्रमाशिक काष्ट्रोतिक के अपेवनियम (1994) की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, अरात सरकार, पुनरीक्षण आवेदन ईकाई,वित्त मंत्रालय, राजस्य विभाग, वीची मंजिस, जीवन वीच 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: (C)
- यदि मान के किसी नुक्सान के मामले में, जहां नुकसान किसी मास को किसी कारखाने से मंडार गृह के पार्गमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पार्गमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी मंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी मंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी प्राचार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी प्रचार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी प्रचार गृह में या भंडारण में माल के प्रसंस्करण के दौरान या किसी कारखाने या किसी भंडार गृह में या भंडारण में प्रसंस्करण के दौरान या किसी अन्य कारखाने या किसी भंडार गृह में या भंडारण में प्रसंस्करण के दौरान या किसी अन्य कारखाने या किसी भंडार गृह में या भंडारण में या किसी कारखाने या किसी अन्य कारखाने या किसी भंडार गृह में या भंडारण में या किसी कारखाने या किसी कारखाने या किसी प्रसंस्करण के दौरान या किसी कारखाने या किसी भंडार गृह में या किसी कारखाने या किसी भंडार गृह में या भंडारण में या किसी कारखाने या किसी भंडार गृह में या किसी कारखाने या किसी भंडार गृह में या किसी कारखाने या किसी मंत्र गृह में या किसी मंत्र गृह में या किसी माल के प्रसंस्करण के दौरान या किसी माल के प्रसंस्करण के दौरान या किसी माल (0)
- भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्मात कर रहे माल के बिनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के झुट (रिबेट) के माभले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्मात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India. (ii)
- 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. (iii)
- सुनिश्चित उत्पाद के उत्पादन शुल्क के भगतान के लिए जो ड्यूटी केहीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (त॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीख अधवा 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 प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमाक्सी,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 संसग्न की जानी चाहिए। साथ ही कन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निधारित 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. (v)
- 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. (vi)
- यदि इस आदेश में कई मूल आहेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भगतान, उपर्यक्त बंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से क्वान के लिए यथास्थित अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.l.O. should be paid in the aforesaid manner, notwith standing the fact that the one 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)
- 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. (E)
- सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेबाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान अकर्षित 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 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 (G)



अपील आदेश /ORDER-IN-APPEAL

M/s Shreejikrupa Project Limited, 206-Krishna Complex, Rajnagar Chowk, Nana Mava Main Road, Rajkot-360 001 (hereinafter referred to as appellant) has filed appeal No.V2/46/RAJ/2022 'against Order-in-Original No. 54/JC (MAN)/2021-22 dated 14.02.2022 (hereinafter referred to as 'impugned 'order') passed by the Joint Commissioner, Central GST, Rajkot (hereinafter referred to as 'adjudicating authority').

- 2. The facts of the case in brief are that during the course of audit of records of the appellant it was noticed that the appellant had provided Work Contract' services to various receivers and not paid service tax wrongly availing benefit of exemption of entry No.12A of Notification No.25/2012-ST dated 20.06.2012. Therefore, a show cause notice dated 19.11.2020 was issued demanding service tax of Rs.1,75,76,500/-. The adjudicating authority, vide the impugned order, had confirmed the demand of service tax of Rs.16,53,447/- in respect of service provided to M/s NMDC Ltd and dropped demand of Rs.1,59,23,053/-. The adjudicating authority imposed penalty of Rs.16,53,447/- under Section 78 of Finance Act, 1994 and Rs.10,000/- under Section 77(2) of the Finance Act, 1994.
- 3. The appellant has filed appeal against the impugned order in which they, inter alia, submitted that the demand of service tax is time-barred. They submitted that show cause notice was issued in pursiance to the audit of the records and of the appellant. They contended that all documents were submitted for audit on 27.02.2019 and based on these documents only, various show cause notices including the present show cause notice were issued. The appellant submitted that it is a settled law that when a show cause notice has been issued invoking extended period for demand, second/subsequent show cause notice cannot be issued invoking extended period. The appellant also drawn attention to Circular No.1053/2/2017-CX dated 10.03.2017 and submitted that instructions issued by the department are binding to the departmental officers. They relied upon a catena of other decisions in this regard.
- 3.1 The appellant submitted that M/s NMDC is a Government of India Enterprise fully owned by Government of India. They submitted that the denial of exemption benefit under Notification No.25/2012-ST was on the premise that M/s NMDC is not a 'government authority'. The appellant contended that in the show cause notice itself, it is mentioned that as per Section 65(26A) the definition of Government is as given below:

"Government means the departments of Central Government, a State Government and its Departments and a union territory and its Departments, but shall not include any entity whether created by a statute or otherwise, the accounts of which are not required to be

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kept in accordance with article 150 of the Constitution or the rules made thereunder".

Article 150 of the Constitution means-The accounts of Union and of the State shall be kept in such form as the President may on the advice of the Comptroller and Auditor General of India (CAG), prescribe.

- 3.3 The appellant submitted that as per the definition of 'Government' as given in Section 65B(26A), the audit of accounts of the noticee is being done by CAG, which indicates that M/s NMDC is maintaining accounts as prescribed by CAG.
- 3.4 The appellant submitted that no penalty is imposable under Section 77 and Section 78 of the Finance Act, 1994. The appellant contended that in case of interpretation of law, no penalty is imposable considering several judgments. The appellant relied upon the case of *Itel Industries Pvt Ltd-2004 (163) ELT.219 (Tri-Bang)*. Appellant submitted that to impose penalty under Section 78 of the Act, existence of suppression etc is basically required to be proved which is completely absent in the present case. They further relied upon the case of *Tamil Nadu Housing Board-1994 (74) ELT.9 (SC)*, Town Hall Committee, Mysore City Corporation-2011 (24) STR.172 (Kar), BSNL-2008 (9) STR.499 (Tri-Bang) and Instant Credit-2010 (17) STR.397 (Tri-Del).
- 4. Shri R.C. Prasad, consultant appeared for personal hearing on 30.11.2022 and handed over written submission in case of four appeal separately. He reiterated the same and the submissions made in the appeal. He submitted that the show cause notices were issued in four cases on the basis of common audit. It is well settled that once all facts became known to the department, suppression cannot be alleged for a subsequent show cause notice and extended period cannot be invoked in these cases. He cited various judgments in this regard and the departmental instructions on this point. Apart from this on merits also the balance of convenience is in their favour as may be seen from the submissions made by them in the grounds of appeal and the written submissions handed over at the time of personal hearing. Therefore, he requested to set aside the impugned orders and to allow the appeals. In the written submission, the appellant has reiterated the submissions already made in the grounds of appeal.
- 5. I have carefully gone through the facts of the case, the impugned order, the appeal memoranda and written as well as oral submissions made by the Appellants. The issues to be decided in the appeal are whether the order of adjudicating authority confirming the demand is proper and whether the demand is time barred.
- 6. The contention of the appellant regarding the limitation was that show cause notice was issued in pursuance to the audit of the records of the appellant

and various show cause notices, including the present show cause notice, were issued. The appellant submitted that it is a settled law that when a show cause period invoking extended issued notice second/subsequent show cause notice cannot be issued invoking extended period. In this regard it is observed that total six show cause notices were issued on the basis of a single audit report No.Audit/Circle-I/Group-6A/581/2019-20 dated 28.11.2019 covering the period October 2013 to June 2017. The show ·cause notices were issued separately covering different points of the audit report and were issued on different dates. Thus it is evident that, the show cause notices, though separately issued, were covering the period of audit October 2013 to June 2017 and hence cannot be said to have been issued for subsequent period. The case laws relied upon by the appellant are related to issue of show cause notice on the same issue for subsequent periods. Therefore, the case law of Nizam Sugar Factory-2006 (197) ELT.465 (SC) and other case laws cited by the appellant is not applicable in the present case. In view of the above, I do not find any infirmity in the findings of the adjudicating authority at paragraph 17 of the impugned order.

- Regarding the confirmation of demand of service tax on 'works contract' service provided to M/s NMDC, I find that main contention raised by the appellant in the grounds of appeal is that M/s NMDC is a Government of India Enterprise fully owned by Government of India and audit of its accounts are being done by CAG. It appears that their contention is that since the accounts of M/s NMDC is being audited by CAG, their accounts are kept in accordance with article 150 of the Constitution and hence it is a department of Central Government and thus, the service provided is exempted vide Sr. No.12A of Notification No.25/2012-ST.
- 7.1 In this regard, I find that M/s NMDC is a company registered under Companies Act and it is not a Government or department of Central or State Government. The consensus seems to be that when the government engages itself in trading ventures, particularly as Government companies under the company law, it does not do so as a political State or political Government, but it does so in the garb and essence as a company. Though it was wholly controlled by the Government, it had a separate entity and its income is not the income of the Government. In the case of Western Coalfields Limited v. Special Area Development Authority, the Supreme Court did not uphold the contention of the Western Coalfields Ltd and Bharat Aluminum Company Ltd (the petitioners) that they were wholly owned by the Government of India and so the companies could not be subjected to property tax. Hon'ble Supreme Court in its judgment dated

111 1981 observed as follows:

"Even though the entire share capital of the appellant companies has been subscribed by the Government of India. It cannot be predicted that the companies themselves are owned by the Government of India. The Companies which are incorporated under the Companies Act, have a corporate personality of their own, distinct from that of the Government of India. The land and buildings are vested in and owned by the companies, the Government of India only owns the share capital."

7.2. On the rationale of the aforesaid judgment, in Hindustan Steel Works Construction Co. Ltd. Vs. State of Kerala, it was held that notwithstanding all the pervasive control of the Government, company is neither a Government department nor a Government establishment. Hon'ble Supreme Court in its judgment dated 22/04/1997 held as under:

"After giving our careful consideration to the facts of the case and the respective contention made by the learned counsel for the parties, it appears to us that the appellant company cannot be held to be a department of the government. There may be deep and pervasive control of the government over the appellant company and the appellant company, on such account may be an instrumentality or agency of the Central Government and as such a 'State' within the meaning of Article 12 of the Constitution. Even though the appellant company is an agency or instrumentality of the Central Government, it cannot be held to be a department or establishment of the government in all cases."

- 7.3 From the above, it is lucid and crystal clear that M/s NMDC, though a company owned by Government of India, is not a department of Government of India. As such, I hold that the appellant has wrongly claimed exemption under Sr. No.12A of Notification No.25/2012-ST and hence there is no infirmity in the order of the adjudicating authority denying the exemption and confirming the demand in respect of service provided to M/s NMDC.
- 8. As regarding the imposition of penalty, I find that the appellant has short paid service tax and the same was unearthed during audit conducted by the department and, thus this is a clear case of suppression of facts with intent to evade payment of tax. Considering the above facts of the case, I hold that the adjudicating authority had correctly invoked extended period of limitation. Since invocation of extended period of limitation on the grounds of suppression of facts is upheld, penalty under Section 78 of the Finance Act, 1994 is mandatory, as has been held by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills reported as 2009 (238) E.L.T. 3 (S.C.). The ratio of the said judgment applies to the facts of the present case. I, therefore, uphold penalty imposed under Section 78 of the Finance Act, 1994. Since there is contravention of Finance Act, 1994 on the part of the appellant, the penalty imposed under Section 77(2) of the Finance Act, 1994 is also upheld.

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

- अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
- The appeal filed by the Appellant is disposed off as above. 10.

सत्यापित / Attested

Superintendent

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

By R.P.A.D.

Rajkot

सेवा में मेरसेर्स श्रीजीकृपा प्रोजेक्ट लिमिटेड 206, कृष्ण कॉम्प्लेक्स, राजनगर चौक, नाना मावा मईन रोड राजकोट-360 001

To M/s Shreejikrupa Project Limited, 206-Krishna Complex, Rajnagar Chowk, Nana Mava Main Road, Rajkot-360 001

प्रतिलिपि:-

1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुक्क, गुजरात क्षेत्र, अहमदाबाद

2) प्रधान आयुक्त,वस्तु एवं,सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट

3) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क मण्डल राजकोट-।

4) अर्ड फाइल।

