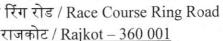


:: आयक्त (अपील्स) का कार्यालय, वस्तु एवं सेवा करऔरकेन्द्रीय उत्पाद शुल्क:: O/O THE COMMISSIONER (APPEALS), GST &CENTRAL EXCISE

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







रजिस्टर्डडाकए.डी.द्वारा

DIN- 20230364SX000000C2E8

अपील / फाइलसंख्या/ Appeal /File No.

मुल आदेश सं / O.I.O. No.

दिनांक/Date

GAPPL/COM/STP//3289/2022

453/AC/NIS/BVR-3/2022-23

12:00:00 AM

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

BHV-EXCUS-000-APP-098-2023

आदेश का दिनांक /

Date of Order:

23.03.2023

जारी करने की तारीख /

Date of issue:

23.03.2023

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

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

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

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. Hamirbhai Kanabhai Kotadiya, 207, Ramji Mandir,, At-Vadhera Village, Tal-Jafrabad, Amreli-365540

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 an appeal to the appropriate authority in the following way.

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।/ (A)

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: -

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।/ (i)

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.

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 असार्वा अहमदाबाद- ३८००१६कों की जानी चाहिए।/(ii)

To the West regional bench 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-1(a) above

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 माँग , ब्याज की माँग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम 5 लाख रुपए या 50 लाख रुपए तो कथबा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क को भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित अपीलीय न्यायाधिकरण की शाखा कि उसे 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।/ (iii)

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 dutydemand/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 any shall be accompanied by a fee of Rs. 500/-

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 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 माँग , क्याज की माँग 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 क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जुमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजिनक 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।/ (B)

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/-.

अपील्ल वत केन्द्रीय उ

(E) यदि हुस आदेश में कई मुल आदेशों का समावेश है तो प्रयेक्त मुल आदेश के लिए शुल्क का भुगतान, उपर्युक्त हंग में किया जाता चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य में बचने के लिए यथास्थित अपीलीय नयाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। \ In case. if the order covers various umbers of order- in Original, fee for each O.I.O. should be paid in the storesaid 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 filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100\- for (Π) पुन्दीक्षण आवेदन के साथ निस्निविद्य निर्धारित शुल्क की अदायगी की जानी चाहिए। 1000 -/ का भुगतान किया जाए। Interevision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Interevision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac The showe 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 secompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-ascompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-ascompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-ascompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-ascompanied by a copy of TR-6 Challan evidencing payment of the OIQ and Order-In-Appeal. It should also be seen to the total and the section of the OIQ and OIQ त्रीय उत्पाद मानी नाहिए। \ स्कृतिक के से प्राप्त के दो प्राप्त में के से केन्द्रीय उतादन शुल्क (अपील) नियमावली,2001, के प्रियम 9 के अंतर्गत विनिर्दिष्ट है, इस आहेश के सेप्रेषण के 3 माह के अंतर्गत की जानी बाहिए। उपरोक्त आवेदन के साथ मुल आदेश के अपिश की प्रतिया कि कार्य म कि के प्राप्त शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निधारित शुल्क की अंदायान के साक्ष्य के प्राप्त कि प्राप Gredit 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.

The Rules made there is a first order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998. (AI) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भुरान को माल निर्पात किया किए methout payment of duty. In case of goods exported outside India export to Nepal or Bhutan, without payment of duty. (111) भारत के बाहर किसी राष्ट्र या क्षेत्र को नियंति कर रहे माल के बिनिमीण में प्रयुक्त कच्चे माल पर मरी गई केन्द्रीय उत्पाद शुल्क के छुट (सिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को नियंति की गयी है। \ In case of rebate of duty of excise on goods exported to any country or territory outside India. In case of rebate of duty of excise on goods exported to any country or territory outside India. (π) यदि माल के किसी नुक्साल के मामले में, जहां तुक्साल किसी माल को किसी कारखाने में भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिसी एक भंडार गृह में दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के नुक्साल के मामले में। भंडार गृह में माल के नुक्साल 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 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, Wew Delhi-110001, under Section-35B ibid:

section (1) of Section-35B ibid: भारत सरकार काणीरक्षण आवेदन : Revision application to Government of India: इस आदश की पुनरीक्षणयाचिका निक्षलिखित मामलो में, केद्रीय उत्पाद शुल्क अधिनयम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गतअवर सचिव, भारत सरकार, पुनरीक्षण आवेदन ईकाई, 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 Society (0) (iii) सेननेट जमा नियमान्त्री के प्रतिष्ठ कि संस्मित देय रक्तम - बश्ते यह कि इस धारा के प्रावधान विनीय (सं॰ 2) अधिनेयम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समझ विचाराधीन स्थान अजी एवं अपील को लागू नहीं होगे।\

For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1994, an appeal against this order shall be 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 bending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

- provided further that the provisions of this Section shall not apply to the stay application and appeals bender any appellate authority prior to the commencement of the Finance (No.2) Act, 2014. (111) वित्त अधिनियम, 1994 की शारा 86 की उप-शाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, मेवाकर नियमवाली, 1994, के नियम 9 (2) एवं 9 (2A) के तहत निर्धारित प्रपन्न 5.T.-७ में की जा सकेनी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क अथवा आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क (अपील) केन्द्रीय व्यायुक्त अथवा उपायुक्त, केन्द्रीय अधिकार के स्वायुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क (अपील) केन्द्रीय उत्पाद केन्द्रित होते करते वहां केन्द्रित होते साथ के अपीलीय न्यायाधिकरण को अधिकार के स्वायुक्त अथवा अधिकार के स्वायुक्त अधिकार केन्द्रित होते होती। \
| 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 sectioned prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be sectioned copy) and copy of the prescribed under Rule 9 (2) & 9(2A) of the Service Tax to file the appeal before the Appellate Tribunal.

Commissioner of Central Excise or Commissionerauthorizing the Assistant Commissioner or Deputy copy) and copy of the grafer passed by the Commissionerauthorizing the Assistant Commissioner or Deputy (क्ष्म केन्द्रित अधिकार) होता के अधिकराण केन्द्रित अधिकार केन्द्रित होता अधिकराण केन्द्रित होता अधिकराण केन्द्रित कर पायुक्त केन्द्रित केन्द्रित इपायुक्त अधिकराण (उपायुक्त केन्द्रित इपायुक्त अधिकराण (उपायुक्त केन्द्रित होता कर अधिकराण (उपायुक्त केन्द्रित कर पायुक्त कर पायुक्त कर केन्द्रित कर पायुक्त कर होता कर अधिकराण (उपायुक्त कर सारा के अवगित अधिकराण कर कर होता होता है अधिकराण होता होता कर सारा के अपील अधिकर कर होता अधिकर कर होता होता है अधिकर कर होता है अधिकर कर होता होता है अधिकर कर होता है अधिकर (1)

यथासंगोधित त्यायालय थुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पिर्टी 6.50 रुपये का त्यायालय थुल्क टिकिट लगा होना चाहिए। \ One copy of application or O.L.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-1 in terms of the Court Fee Act, 1975, as amended.

सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय त्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों की और भी ध्यान आकपित किया जाता हैं। / 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.

उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नदीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकत है। \ 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.

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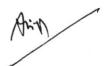
:: अपील आदेश / ORDER-IN-APPEAL ::

M/s. Hamirbhai Kanabhai Kotadia, Vadhera (hereinafter referred to as "Appellant") has filed the present Appeal against Order-in-Original No. 453/AC/NIS/BVR-3/22-23 dated 22.09.2022 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central GST Division-3, 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 18.08.2020 & 02.12.2020 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. However, no reply was received from the Appellant.
- 3. In absence of data/ information, a Show Cause Notice dated 21.12.2020 was issued to the Appellant, demanding Service Tax and cess to the tune of Rs. 7,84,641/- under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act') alongwith interest under Section 75 of the Act. It was also proposed to impose penalties under Section 77(1)(a), 78, 77(2) and 77(1)(c) of the Act upon the Appellant.
- 4. The adjudicating authority vide the impugned order confirmed the demand of Rs. 7,84,641/- under Section 73(1) along with interest under Section 75 of the Act, imposed penalty of Rs. 7,84,641/- under Section 78 of the Act, imposed penalty of Rs. 5,000/- each under Section 77(1)(a) & 77(2) of the Act.
- 5. Being aggrieved, the Appellant has preferred the present appeal on various grounds as stated below:
- (i) The Appellant is engaged mainly in the business of manufacturing of bricks and thereby supplying of civil construction material mainly bricks, grit stone, sand, while stone (bela), steel material supply, tiles and sanitary wares supply to the customers at proposed civil construction site. Shri Kalubhai Valerabhai Lakhontra (Prop. Parth Construction) has deducted TDS on civil construction material supply contract and on the basis of the same there were such huge liability of the Service Tax has been casted vide the impugned order. The TDS deductor has also issued a certificate to the effect that they have not made any payment of Service Tax to the Appellant since they have purchased materials from the Appellant. They have produced copies of purchase bills for

Service Tax is leviable. The Adjudicating Authority has erred in passing the impugned order without verifying the relevant documents submitted before him through their letter dated 21.01.2021 which was duly acknowledged by the office of the Adjudicating Authority on 02.02.2021.

- 6. Personal hearing in the matter was held on 17.03.2023. Shri Mahesh Ladumor, appeared for personal hearing and submitted that the Appellant did not provide any service to any one but purchased construction related materials for different vendors/ Shops and supplied it to M/s. Parth Construction [proprietor: Kalubhai V. Lakhontra, P/45]. He referred to Form 26AS showing name of the deudctor (p/34 & 38), letter dated 13.01.2021 for the deductor (P.42) and purchase invoices (P.46-52). He submitted that the appellant had replied to the Show Cause Notice vide letter dated 21.01.2021 which was received by the Adjudicating Authority on 02.02.2021 and duly acknowledged. (P.29). However, the Adjudicating Authority has ignored this and passed the impugned order for demand, interest and penalty ex-parte, causing injustice to the Appellant. Therefore, he requested to set aside the same.
- 7. I have carefully gone through the case records, Show Cause Notice, 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 and the same had been issued only on the basis of data received from the Income Tax department. The Adjudicating Authority has confirmed the demand of Service Tax vide the ex-parte order without considering the reply to the Show Cause Notice submitted by the appellant and duly acknowledged by him. Now the main issue to be decided in the instant case is whether the activity carried out by the Appellant amounts to rendering any service covered under the Act and as to whether the amount received for providing the services is taxable, or otherwise.
- 9. It is the contention of the Appellant that they have filed reply to Show Cause Notice vide their letter dated 21.01.2021 which was received and acknowledged by the office of the Adjudicating Authority on 02.02.2021. They further argued that they are engaged in sale and purchase of building materials and supplied the same to their customer based on contract entered by them with their customer. On verification of Form 26AS, it is evident that the amount mentioned therein has been treated as base for demand of Service Tax by the Adjudicating Authority. The said income is received from Shri Kalubhai Valerabhai Lakhontra, proprietor of M/s. Parth Construction. The Appellant produced copy of balance sheet wherein figures of opening stock, material purchase, closing stock etc. has been mentioned. The copies of purchase invoices submitted by the Appellant suggest that they have purchased building materials like steel, sanitary wares, cement, bricks etc. and supplied the same



to Shri Kalubhai Valerabhai Lakhontra, proprietor of M/s. Parth Construction, who has deducted TDS on the amount paid to the Appellant. Shri Kalubhai Valerabhai Lakhontra, proprietor of M/s. Parth Construction has issued a certificate in favour of the Appellant to the effect that their's is a proprietorship concern in the name of Parth Construction engaged in business of civil contractor and heavy earthmoving equipment work contractor. They purchased various civil construction materials from the Appellant and deducted TDS on the same since they were under obligation as per Section 44AB of the Income Tax Act, 1961.

- 10. All these material facts supported by documentary evidences suggest that the Appellant was engaged in sales and purchase of building materials, which is trading, not service and is not liable to Service Tax.
- 11. I find that the term 'service' is defined under Section 65(44) of the Act as under:

"Service means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include-

- (a) An activity which constitute merely-
- (i) A transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
- (ii)....
- (iii)"

Therefore, sale of goods does not fall under definition of service.

11.1 Under Section 66B of the Act, service tax shall be levied on the value of all services, other than those service specified in the negative list. Negative list denotes the list of services on which no service tax is payable under Section 66B of the Act. As per Section 66D (e), trading of goods is a service specified under the negative list which is as under:

"SECTION 66D. Negative list of services.—

The negative list shall comprise of the following services, namely:-

- (a)....
- (b)
- (c)
- (d)....
- (e) trading of goods;"

Accordingly, on the activity of trading of goods, no service tax is payable.

11.2 Section 66B provides that service tax is leviable on all 'services' other than the services specified under the negative list. Therefore, for being subject to service tax an activity needs to qualify as a service first. The term 'service' is defined under Section 65B (44) which specifically excludes an activity of mere

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transfer of title in goods by way of sale. Thus, the activity of trading which is merely buying and selling of the goods is not a service. Hence, the question of service tax levy on the same does not arise. Accordingly, it is not liable to service tax, as the same is not a service. Further, negative list of services comprises services but an activity of trading of goods is not a service, therefore it can be specified under the negative list of services.

- 12. In view of discussions and finding as above, I set aside the impugned order and allow the appeal filed by the Appellant.
- 13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

आर. श्रेस. बोरींचा / R. S. BORICHA (शिव प्रताप सिंह)/(Shiv Pratap Singh)

अधीक्षक / Superintendent के. व. एवं सेवा कर अपील्स, राजकोट आयुक्त (अपील)/Commissioner (Appeals)

By R.P.A.D. CGST Appeals, Rajkot

To, M/s. Hamirbhai Kanabhai Kotadia, 207, Ramji Mandir, AT: Village-Vadhera, Taluka: Jafrabad, Dist.: Amreli. सेवा में, मे हमीरभाई कानाभाई कोटडीया, 207, रामजी मंदिर, गाँव: वाढेरा, तालुका:

जाफराबाद, जिल्ला: अमरेली ।

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, भावनगर आयुक्तालय, भावनगर को आवश्यक कार्यवाही हेत्।
- 3) अपर/सयुंक्त 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 मण्डल-3, भावनगर को आवश्यक कार्यवाही हेत्।
- 5) गार्ड फ़ाइल।

