

## ः : आयुक्तः (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,

<u>राजकोट / Rajkot – 360 001</u>

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



# रजिस्टर्डडाकए.डी. द्वारा :-

#### DIN-20230164SX000000A1EA

क अपील / फाइलसंख्या/ Appeal /File No.

(B)

केन्द्रीय उर्दि

V2/4/EA2/RAJ/2022

मूलवादेशसं / OIO No.

22/AC/NS/2021-22

दिनांक/ Date

23-12-2021

677

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

# **RAJ-EXCUS-000-APP-002-2023**

आदेश का दिनांक / Date of Order:

23.01.2023

जारी करने की तारीख / Date of issue:

24.01.2023

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

Passed by Shri Shiv 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 मृजित : / Arising put of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise/ST / GST, Rajkot / Jamnagar / Gandhidham :

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

# M/s. Gunvantray Laxmidas Kaneriya, A-15, Gold Residency, B/H Hevlock, Nana Mava Main Road, Dist- Rajkot.

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समझ 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 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 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,,द्वितीय तल, बहुमाली भवन असावा बहुमदाबाद- ३८००१६को की जानी चाहिए।/

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bhaumali Bhawan, Asarwa Ahmedabad-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) 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 , क्याज की माँग और लगाया गया जुमीना, रुपए 5 लाख त्रमसे कम है ने लाख रुपए या 50 लाख रुपए तो लाख रुपए से अधिक है तो कमशः 1,000/- रुपये, 5,000/- रुपये अपना 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का मुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रिजस्टार के नाम से किसी भी सार्वजिनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक द्वारा होया किया जाना चाहिए। संबंधित ड्राफ्ट का मुगतान, बैंक की 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।/

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/-.

अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5में 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 प्रभाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की माग , ज्याज की माग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए यो 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमश: 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये क्या वा 10,000/- रुपये का निर्धारित अपोलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वाजनक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक इास्ट द्वारा किया जाना चाहिए। संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थान आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।/

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal Shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and Shall be observed by a copy of the order appealed against (one of which shall be certified copy) and should be a fees of Rs. 1000/- where the amount of service tax interest demanded & penalty levied of Rs. 5 takhs or less, Rs. 5000/- 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 rupees, in the form of crossed bank draft in favour of the Assistion 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/-.

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- वित्त अप्रिनियम,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 प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क हारा पारित आदेश की प्रतियों संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त हारा 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. (i)
- (ii)

Commissioner of Central Excise/ Service Tax 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 1944 की धारा 35 एफ के अंतर्गत, जो की वित्तीय अधिनयम, 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 ऐसेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भूगतान किया आए, बशर्त कि इस धारा के अंतर्गत रकम कान्त्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

(i) धारा 11 डी के बंतर्गत 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 वितीय (सं॰ 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थान कर्षी 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 of erroneous Cenvat Credit taken;
(iii) 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 आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षण आवेदन 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 Secretary, to the Government of India, Revision Application Unit, Ministry
of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delni-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 माल के किसी नुक्सान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से मंडार 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 (i)

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 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)

सिनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो इस्ट्री केहीट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो अयुक्त (अपील) के द्वारा वित्त अधिनियम (न॰ 2),1998 की धारा 109 के द्वारा नियत की गई तारीख 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 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 अधिलियम, 1944 की धारों 35-EE 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. (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 भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय नयाधिकरण को एक अपील या केदीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers variousnumbers of order in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the Appellant Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lakh fee of Rs. 100/- for each. (D)

यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-। के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये का न्यायालय शुल्क टिकिट लगा होना चौहिए। / 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 सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करने वाले नियमों 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 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)



## ORDER IN APPEAL

This appeal has been filed by Assistant Commissioner, Central GST Division-II, Rajkot against Order-in-Original No.22/AC/NS/2021-22 dated 23.12.2021 (hereinafter referred to as the 'impugned order') passed by the Assistant Commissioner, Central GST Division-II, Rajkot (hereinafter referred to as the adjudicating authority in respect of M/s Gunvantray Laxmidas Kaneriya, A-15, Gold Residency, B/h Hevlock, Nana Mava Road, Rajkot (hereinafter referred to as the 'respondent').

- 2. Briefly stated the facts of the case are that a show cause notice was issued to the respondent on the basis of data provided by the income tax department demanding service tax of Rs.1,81,275/- on the income of Rs.12,08,500/- shown in the income tax return for the Financial Year 2016-17. The adjudicating authority, after considering the explanation given by the respondent, dropped the proceedings by the impugned order.
- 3. The Principal Commissioner of CGST, Rajkot has reviewed the impugned order under Section 84 (2) of the Finance Act, 1994 and accordingly the department has filed the present appeal on the following grounds:
- i. The adjudicating authority has not properly examined the facts of the case as well as statutory provisions contained in the Finance Act relating to 'Construction of Residential Complex Service'.
- ii. The service provided by the respondent appears to be covered under the category of 'Manpower Recruitment or Supply Agency Service'. The respondent has provided 'labour service' to their service recipient i.e M/s Royal Construction. It is also an admitted fact that the Respondent received an amount of Rs.3,60,000/- for construction of single residential unit for which there was no written agreement with the owner of the land; that they received payment in cash only in various instalments as per the progress of construction works.
  - iii. The adjudicating authority has erred in defining the service provided by the respondent in the exempted category of 'Construction of Residential Complex Service' in terms of Mega Exemption Notification No.25/2012-ST dated 20.06.2012. With effect from 01.07.2012, all services, other than those mentioned in the Negative List are taxable and so it is no longer mandatory to classify each service provided by the service provider. In view of the same, it appears that the adjudicating authority has failed to observe that the service provided by the respondent is taxable service in terms of Section 66B of the Finance Act, 1994.
  - iv. The services received by the respondent would be covered under the service tax category of 'manpower recruitment or supply agency' and respondent is liable to pay service tax of Rs.31,275/- on the service provided by him on the income to the tune of Rs.2,08,500/- i.e, the amount exceeds the small service provider exemption limit of Rs.10,00,000/-.
- 4. Shri R.C. Prasad, consultant appeared for personal hearing on 12.01.2023 and handed over a paper book with authorization from the respondent and other documents with written submissions. He submitted that the dispute pertained to levy of service tax of Rs.31,275/- on the services rendered. He submitted that the matter pertains to construction of a single residential unit for which the respondent has simple to bill for payment. The department has filed appeal alleging the same to be

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manpower supply merely because respondent has not produced a written agreement for the work. He submitted that it is a common practice that such small works are based on oral contracts and payment is made in cash. Therefore, he requested to set aside the order-in-original and allow the appeal.

- 5. In the written submission, the respondent submitted that:
  - i. It is an established principle that the facts and allegations which have not been mentioned in the show cause notice should not be taken as a new ground in the memorandum of appeal. This is as good as travelling beyond the scope of show cause notice. The respondent relied upon the cases of M.K.R. Frozen Food Export-1998 (103) ELT.383 (Tri) and Swastik Coaters Pvt Ltd-1999 (107) ELT.533 (Tri).
- ii. The respondent submitted that the show cause notice was not issued on any allegation or investigation, but only on the basis of details shared by the Income Tax Department. Out of total income of Rs.12,08,500/-, the respondent received Rs.3,60,000/- from single residential unit work which was exempted and remaining amount of Rs.8,48,500/- was below the basis taxable limit of service tax. As there was no other allegation, there was no chance or requirement to submit any more explanations.
- iii. Respondent submitted that though this was not an allegation in the show cause notice and the ground of levy of service tax on the basis of Section 66E(f) of the Finance Act, 1994, the services of construction, erection, commissioning or installation of original works pertaining to a single residential unit are exempted from payment of service tax by virtue of entry No.14(b) of Notification No.25/2012-ST dated 20.06.2012.
- iv. The respondent submitted that the adjudicating authority who had examined the documents had mentioned in the impugned order that the respondent had provided service of 'construction, erection, commissioning or installation or original works pertaining to a single residential unit'. On the other hand, at the filing appeal department has not examined this aspect and without giving any cogent evidence has held that the services are liable to service tax. The respondent submitted copy of invoice showing construction service for residential unit.
- v. The respondent submitted that the appellant department has failed to note that there is a difference between 'labour service' and 'labour (manpower) supply' service. If employing manpower for providing any service is to be taken as 'manpower recruitment or supply agency' then for providing any services some workforce/ manpower is required and then all the cases would be treated as 'manpower recruitment or supply agency service'. The respondent relied upon a catena of decisions in this regard.
- vi. The respondent submitted that show cause notice was issued on the basis of information and details filed by the respondent with Income Tax department. There was nothing to withhold the information and there was no suppression and as such the show cause notice is time barred.
- vii. The respondent submitted that where there was no allegation of any malafide intention to evade payment of tax, there is no justification for imposition of penalty.
- 6. I have carefully gone through the facts of the case on record and the submissions made by the department in grounds of appeal. I have also gone through the submissions made by the respondent in writing as well as those made orally at the time of hearing. The moot question to be answered in the present appeal is whether the adjudicating authority was correct in dropping the proceeding initiated against the respondent.
- 7. In this regard, I find that the show cause notice was issued on the basis of data received from the Income tax department without making any investigation as to whether the income shown in the income tax returns was towards consideration received by the respondent for any taxable service provided by him. The adjudicating

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authority, after considering the submission made by the respondent, has concluded that the respondent has received income of Rs.3,60,000/- from construction of single residential unit which is exempted as per clause 14(b) of Notification No.25/2012-ST and after deducting the said amount, the aggregate value of taxable service provided during the year 2016-17 was less than the threshold of exemption under Notification No.33/2012-ST.

- While challenging the said finding of the adjudicating authority in the present 7.1 appeal, the department has not adduced any evidence in support of their claim that the service provided by the respondent is 'manpower supply service' and not 'construction service'. In the grounds of appeal it is contended that the respondent has provided labour service to their service recipient M/s Royal Construction and it appears to be purely labour service provided by the respondent falling under the definition of 'manpower recruitment or supply agency' service. On the other hand, the respondent submitted that there is a difference between 'labour service' and 'labour (manpower) supply' service. I incline to agree with the contention of the respondent in this regard because as per the definition given under Section 65(68) of 'manpower recruitment or supply agency' means any the Finance Act, 1994, commercial concern engaged in providing any service, directly or indirectly, in any manner for recruitment of supply of manpower, temporarily or otherwise, to a client. In the present case, the respondent has engaged labour for himself and not provided any manpower to another person. The department has not adduced any evidence to prove the contrary.
- 7.2 Therefore, I do not find any reason to interfere in the finding of the adjudicating authority that the respondent has received income of Rs.3,60,000/- from construction of single residential unit which is exempted as per clause 14(b) of Notification No.25/2012-ST.
- 8. In view of the above findings, I uphold the impugned order and reject the appeal filed by the department.

सत्यापित / Attested

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(SHIV PRATAP SINGH)
Commissioner(Appeals)

Superintendent

Central GST (Appeals)

By R.P.A.D.

Rajkot

To,
M/s Gunvantray Laxmidas Kaneriya,
A-15, Gold Residency,
B/h Hevlock,

ए-15 गोल्ड रेसिडेंसी , बिहाइंड हेव्लोक्क, नाना मावा रोड ,

मेस्सेर्स गुणवंतराय लक्ष्मीदास कनेरिया

राजकोट।

सेवा मे.



- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- र्प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्कमण्डल राजकोट ॥ को आवश्यक कार्यवाही
  हेतु।
- 4) गार्ड फ़ाइल।

