



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

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



सत्यमेव जयते

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

रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN-20230264SX0000323337

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / OIO No.	दिनांक / Date
	V2/21/RAJ/2021	12/JC(AKS)/2020-21	31-12-2020

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

RAJ-EXCUS-000-APP-008-2023

आदेश का दिनांक / Date of Order:	30.01.2023	जारी करने की तारीख / Date of issue:	02.02.2023
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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 एवं सेवाकर,
राजकोट / जामनगर / गांधीधामा 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 एवं पता / Name & Address of the Appellant & Respondent :-

M/s. R K Construction, Khodiyar Krupa, Opp. Navnit Dairy, Near Ayodhya Society, Hari Dham Marg Rajkot-360003

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

- (A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है /
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-
- (i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामलों 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 ब्रताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असारवा अहमदाबाद- ३८००१६ को की जानी चाहिए /
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above
- (iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम 5 लाख रुपए या 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- 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/-.

- (B) 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 सकती एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम 5 लाख रुपए या 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- 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/-.



- (i) वित्त अधिनियम, 1994 की 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 द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.
- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जमाना विवादित है, या जमाना, जब केवल जमाना विवादित है, को भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है
(i) धारा 11 डी के अंतर्गत रकम
(ii) सेनवेट जमा की सी गई गलत राशि
(iii) सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम
- बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं- 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा। /
For an appeal to be filed before the CESTAT, under Section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores,
Under Central Excise and Service Tax, "Duty Demanded" shall include :
(i) amount determined under Section 11 D;
(ii) amount of erroneous Cenvat Credit taken;
(iii) amount payable under Rule 6 of the Cenvat Credit Rules
- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.
- (C) भारत सरकार कोपनरीक्षण आवेदन :
Revision application to Government of India:
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपरंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /
A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:
(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /
In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse
(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छूट (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.
(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /
In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.
(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो झूठी केडीटी इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा 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.
(v) उपरोक्त आवेदन की दो प्रतियाँ प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संश्लेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियाँ संलग्न की जानी चाहिए साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 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.
(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए।
जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए।
The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.
(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पत्री कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers of order- in Original, fee for each O.I.O. should be paid in the aforesaid manner, notwithstanding the fact that the one appeal to the 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.
(E) 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 टिकट लगा होना चाहिए। /
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.
(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य 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.
(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम 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



अपील आदेश /ORDER-IN-APPEAL

M/s R.K. Constuction, Khodiyar Krupa, Opp. Navnit Dairy, Nr.Ayodhya Society, Har Dham Marg, Rajkot-360 003 (*hereinafter referred to as 'Appellant'*) has filed Appeal No. V2/21/RAJ/2021 against Order-in-Original No. 12/JC(AKS)/2020-21 dated 31.12.2020 (*hereinafter referred to as 'impugned order'*) passed by the Joint Commissioner, Central Excise & CGST, Sub-Commissionerate, Jamnagar (*hereinafter referred to as 'adjudicating authority'*).

2. The facts of the case, in brief, are that an inquiry conducted by the officers of DGGI revealed that the appellant had proved 'works contract' services in relation to construction of civil structure which appeared to be liable to service tax. 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.

2.1 After scrutiny of the documents produced by the appellant a show cause notice dated 08.11.2019 was issued to the appellant demanding service tax of Rs.1,03,13,764/- under Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Act, and proposing imposition of penalty under Sections 76, 77 and 78 *ibid*.

2.2 The above Show Cause Notice was adjudicated by the adjudicating authority *vide* the impugned order who confirmed the demand of Rs.68,92,082/- and dropped the demand for Rs.34,21,683/- under Section 73(1) of the Finance Act, 1994 along with interest under Section 75 of the Act. He also imposed penalty of Rs.68,92,082/- under Section 78 and Rs. 10,000/- under Section 77(1)(a) and Rs.10,000/- under Section 77(1)(b) of the Finance Act, 1994.

3. Being aggrieved, the Appellant has filed the present appeal wherein they, *inter alia*, contended that;

- The adjudicating authority while passing the order simply dropped the demand of service ax wherever from the documents he convinces that works contract services were provided for the contract executed prior to 01.03.2015 but he failed to extend similar benefits to number of transactions were contracts were executed prior to 01.03.2015.
- The adjudicating authority has confirmed the demand of service tax for F.Y 2014-15 on entries at Sr.No.23, 30, 31 to 37 and 40 on the ground that Work Order/R.A bill are not submitted. Actually, all the



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documents were submitted to the officers without keeping copy of the same. They enclosed copy of work order dated 28.04.2014 and First and Final Bills for Sr.No.31 to 37 and submitted that the services were exempted from service tax under Sr.No.12 and 12A of Notification No.25/2012-ST.

- Though for entry at Sr.No.23, 30 and 40 of Annexure-I, they were not able to submit documents again, it is admitted facts on record that only works contract services were provided to Government and Local authority and therefore, the same were exempted.
- Services referred at Sr. No.15,16, 23, 30 and 31 of Annexure-II are for contract executed prior to 01.03.2015 and the services are exempted from levy of service tax under Sr. No.12 of Notification No.25/2012-ST.
- As regard to provisions of works contract services at Sr.No.17 to 21, 32, 34 to 37 of Annexure-II to the recipient of services mentioned in column 2, the nature of work done were 'original work' and therefore, service tax was payable only on forty percent of total amount charged for the works contract.
- For entry at Sr. No.24 to 29 and 38 of Annexure-II for F.Y 2015-16, they were not able to submit documents again, the work contract services were provided to Government, except Sr.No.24, service tax on 100% value of works contract cannot be demanded and the service tax on 40% of value of service can be demanded.
- Demand of service tax in Annexure-III for F.Y. 2016-17 against entries at Sr.No.5,6,10,17 to 22 for provision of works contract services were furnished but the same are considered as repairing work. Actually, as per works contract order and nature of work carried out, same are 'original work' within the meaning given at clause (a) of Explanation 1 to Rule 2A(ii)(B) of Service Tax (Determination of Value) Rules, 2006 and not work covered by sub-clause (B) of the said rule. Therefore, service tax is payable only on forty percent of the value.
- Though they were not able to submit documents again in respect of entry at Sr.No.26 to 28 and 32 of Annexure-III, it is admitted facts on record that only works contract services were provided to Government and Local authorities and, therefore, service tax can be demanded on 40% value of the services.



- Entry at Sr.No.1 of Annexure-IV is for the year 2011-12 and therefore, no service is payable on the said work as the same pertains to the work order prior to 01.03.2015. In any case, as per works contract order and nature of work carried out, same are 'original work' within the meaning given at clause (a) of Explanation 1 to Rule 2A(ii)(B) of Service Tax (Determination of Value) Rules, 2006 and hence service tax was payable only on forty percent of the total amount charged for the works contract.
- The investigation has also made serious error in computing service tax amount in all the Annexures. As per Sr.No.9 of Notification No.30/2012-ST read with clause I(v) read with Rule 2(d)(i)(F)(c) of Service Tax Rules, 1994 service portion in execution of works contract by any individual located in taxable territory to a business entity registered as body corporate, located in the taxable territory is payable 50% by the person who provides the service and 50% by any person liable for paying service tax other than the service provider. Body corporate is not defined anywhere in the Finance Act, 1994 at least after 01.07.2012. Therefore, state government and other recipient have to be considered as body corporate for the purpose of Notification No.30/2012-ST. They relied upon the following decisions:
 - a) *G.N. Constructions-2020 (37) GSTL.305 (Tri-Chan)*
 - b) *Bharat Bhushan Gupta & Co-2016 (44) STR.195 (P&H)*
- It is admitted fact that the appellant was not registered with Service Tax department. Therefore, the amount received by the appellant towards provision of service has to be considered as inclusive of service tax.
- Without admitting anything, it is further submitted that major demand is badly time barred. It is settled position of law that mere failure to pay tax or taking registration does no amount to suppression etc. They relied upon the following decisions:
 - a) *Padmini Products-1989 (43) ELT.195 (S.C)*
 - b) *Chemphar Drugs & Liniments-1989 (40) ELT.276 (S.C)*
 - c) *Gopal Zarda Udyog-2005 (188) ELT.251 (S.C)*
 - d) *Uniworth Textiles Ltd-2013 (288) ELT.161 (SC)*
 - e) *Circular No.1053/2/2017-CX dated 10.03.2017*
 - f)
- It is also settled position of law that circular/instruction issued by the department is binding upon department and as per judicial discipline decisions of higher appellate authorities are also binding upon the lower authorities as per settled position of law.

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a) *Dhiren Chemical Industries-2002 (139) ELT.3 (SC)*

b) *Instruction F.No.201/01/2014-CX.6 dated 26.06.2014.*

- Demand of service tax for the period 2014-15 to 2016-17 is time barred as there is no suppression of facts etc. As per Section.73(1) of Finance Act, 1994 notice is required to be served within 30 months from the relevant date. The show cause notice was required to be served on or before 25th October 2019, whereas it was served on 08.11.2019 and hence is time barred.
- Even demand of service tax of Rs.71,988/- for the period from 01.04.2017 to 30.06.2017 is also not payable as same is exempted under Notification No.25/2012-ST.
- The investigation has either not read the decision of *Neminath Fabrics Pvt Ltd-2010 (256) ELT.369 (Guj)* or failed to understand ratio laid down in the said decision. The ratio of the said decision cannot be applied in the present case at least at the show cause notice stage. The Apex Court in the case of *Rajasthan Spinning and Weaving Mills-2009 (238) ELT.3 (SC)* held that in case of non-payment of duty is intentional and by adopting any means as indicated in the proviso then the period of notice gets extended to five years. As suppression etc is absent, notice cannot be issued beyond normal period.
- Article 20(1) of Constitution of India provides that no person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than which might have been inflicted under the law in force at the time of the commission of offence. They relied upon the following decisions:
 - a) *ELGI Equipments-2001 (128) ELT.52 (SC)*
 - b) *Beco Chemicals Pvt Ld-2003 (156) ELT.668 (Tri-Del)*
 - c) *Priyadarshini Cements Ltd-2008 (224) ELT.429 (Tri-Bang)*
 - d) *Priyadarshini Cements Ltd-2013 (292) ELT.30 (AP)*
- The present issue involves interpretation of complex legal provisions and, therefore, extended period of limitation is not invocable. They relied upon the following judgments.
 - a) *Singh Transporters-2018 (13) GSTL.J40 (SC)*
 - b) *Nizamsingh Chauhan-2017 (6) GSTL.J106 (MP)*
 - c) *Alicon Pharma Pvt. Ltd-2015 (322) ELT.47 (Guj)*
 - d) *Interjewel Pvt. Ltd-2015 (40)str.759 (Tri-Mum)*
 - e) *Amway India Enterprises Pvt Ltd-2017 (3) GSTL.69 (Tri-Del)*

4. Advocate P.D. Rachchh appeared for personal hearing in virtual mode on 11.01.2023 and reiterated the submissions in the appeal and submitted



that the appellant was providing works contract service to various government agencies. The exemption under Sr. No.12 of Notification No.25/2012-ST which was omitted vide notification No.6/2015-ST w.e.f 01.04.2015 was reintroduced vide Notification No.9/2016-ST dated 01.03.2013 and was given retrospective effect vide Section 102 of the Finance Act, 1994. He submitted that in case of works contracts the service provider is liable to pay 50% of the tax and remaining 50% tax liability was on the recipient on RCM basis. Further, the works contract services are eligible for rebate of 60%. Since the appellant did not collect any service tax separately, the amount received has to be treated as cum-duty value. After considering these aspect, the appellant's liability is only Rs.19,95,354/-. Therefore, he requested to set aside/modify the impugned order-in-original.

5. I have carefully gone through the facts of the case on record and the submissions of the appellant. The 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 appellant and imposing penalty is legal and proper or otherwise.

6. On recapitulating, I find that the non-payment of service tax by the appellant came to light after an inquiry conducted by the officers of DGGI. The inquiry revealed that the appellant had provided 'works contract' services in relation to construction of civil structure on which service tax was leviable. The appellant had not obtained registration under Service Tax Rules and did not pay service tax on the consideration received for providing taxable service. During the investigation, the appellant was not able to furnish all the relevant work orders for the services provided. During the adjudicating proceedings before the adjudicating authority also, the appellant did not produce all the relevant documents and wherever documents produced to the satisfaction of the adjudicating authority, he has extended the benefit of exemption and confirmed the demand in respect of the services as tabulated below:

Annexure-A-I

Sl. No. of Annex.	Name of service recipient	Taxable amount	Service tax payable	Reasons
23	Executive Engineer, R & B	21815	2696	Documents not submitted
30	EE, Project Construction Div-4	72412	8950	-do-
31	EE, District R & B Division, Rajkot	21180	2618	-do-
32		143195	17699	



33		117818	14562	
34		70652	8733	
35		195500	24164	
36		63159	7806	
37		37875	4681	
40	Jasdan Nagarpalika	314500	38872	-do-
	Total		130781	

Annexure-A-II

Sl. No. of Annex.	Name of service recipient	Date of contract	Description and nature of work	Taxable amount	Service tax payable	Reasons
15	Commissionerate of Health, Project Implementation Unit, Gandhinagar	31.03.2015	Repair to Ophthalmology building at PDU Hospital	71124	9957	Work order after 01.03.2015
16	-do-	31.03.2015	Repair to RDD office campus, Rajkot	71688	10036	-do-
17	EE (R &B) Division, Rajkot	28.05.2015	Plastering and colouring work, renovation	1426004	206771	-do-
18				458739	66517	-do-
19	-do-	15.06.2015	Painting	173082	24231	-do-
20	Rajkot Municipal Corporation	20.06.2015	Repair of Primary School	519356	72710	-do-
21	EE (R &B) Division, Rajkot	13.07.2015	Window grill fitting, toilet repair	1456339	211169	-do-
22	-do-	13.07.2015	Painting work	2156932	312755	-do-
23	Commissionerate of Health, Project Implementation Unit, Gandhinagar	21.10.2015	Construction of staff quarter	992504	143913	-do-
30	EE (R &B) Division, Rajkot			207536	30093	
31				86026	12474	
					2359347	

Besides, the adjudicating authority has confirmed the whole demand of service tax as per Annexure-A-III and A-IV of the show cause notice.

7. The appellant has produced certain documents along with the appeal as per Exhibit-F1 to F4 and my observations on the same is as under:

7.1 Exhibit-F1 is the revised Annexure A-I in respect of Sr. No.23, 30, 31 to 37 and 40. The appellant has not produced any document in respect of Sr. No.23, 30 and 40 and it is mentioned that Tender/Worker order not

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submitted'. Thus, it is evident that the appellant does not have the documentary evidence to prove that the work carried out in these cases are exempted.

7.2 The appellant has produced copies of RA bill in respect of works mentioned at Sr. No.31,32,33,34,36 and 37 of Annexure A-I. On perusal of the said Bills I find that the work carried out by the appellant in respect of work at Sr. No.31 was providing and fixing shelf, painting and providing and fixing door shutters etc to District Sub Division Office, Rajkot and the work order was awarded before 1st March 2015. Therefore the service provided is covered under exemption as per Sr. No.12 of Notification No.25/2012-ST.

7.3 The name of work in respect of Sr. No.32 was supplying black cotton soil and cleaning the ground etc for ITI building at Padadhari. These works, in my opinion, are not related to any construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of civil structure and hence the benefit of exemption as per Sr.No.12 of Notification No.25/2012-ST is not allowed.

7.4 The nature of work in respect of Sr. No.33, 34, 36 and 37 was for providing fencing to R.S No.119 of Village Nyara of Tal. Padadhari and the work order was awarded before 1st March 2015. Therefore the service provided is covered under exemption as per Sr. No.12 of Notification No.25/2012-ST.

7.5 The appellant has not produced any documentary evidence in support of their claim of exemption as per Sr. No.12 of Notification No.25/2012-ST in respect of the work at Sr. No.35. Therefore, the benefit as claimed by the appellant cannot be extended.

7.6 As per the above discussion and findings, demand of service tax to the tune of Rs. 56,099/- in respect of the works at Sr. No.31, 32, 33, 34, 36 and 37 of Annexure A-I of the show cause notice are required to be dropped as below:

Sr. No. of Annexure	Name of service recipient	Value of service	Service tax
31	EE, District R & B Division, Rajkot	21180	2618
32		143195	17699
33		117818	14562
34		70652	8733
36		63159	7806
37		37875	4681
		Total	



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8.1 With Exhibit-F2, the appellant submitted copies of RA bill in respect of works mentioned at Sr. No.15, 16, 23, 30 & 31 of Annexure A-II. The appellant submitted copy of 'notice to proceed with the work' dated 12.06.2014 issued by Commissionerate of Health, Project Implementation Unit, Gandhinagar in respect of works at Sr. No.15 and 16. The name of work as mentioned in the said notice is 'Annual Rate Contract for civil works for various Healthcare Facilities in Rajkot (City), Gujarat State'. They have also submitted copies of Bill/ Office order sanctioning the bill amount. The work order was awarded before 1st March 2015 and, therefore the service provided is covered under exemption as per Sr. No.12 of Notification No.25/2012-ST.

8.2 In respect of the work at Sr. No.23, the appellant submitted copy of 'notice to proceed with the work' dated 21.10.2015 issued by Chief Engineer, Commissionerate of Health, Project Implementation Unit, Gandhinagar according to which the name of work is 'New Construction of Staff Quarters'. Since the work order issued is after 01.03.2015, the exemption as per Sr. No.12 of Notification No.25/2012-ST cannot be extended as the exemption under Sr. No.12 of Notification No.25/2012-ST which was omitted vide notification No.6/2015-ST w.e.f 01.04.2015 and reintroduced vide Notification No.9/2016-ST dated 01.03.2016 and given retrospective effect vide Section 102 of the Finance Act, 1994 is for the contract entered into before 01.03.2015. The contention of the appellant that the expenditure of the work was debited 2014-15 and hence the benefit of exemption available is not tenable as the explicit provision in the notification No.9/2016-ST and Section 102 of the Finance Act, 1994 makes it clear in unequivocal terms that exemption is available only to those contracts entered into before 1st March 2015.

8.3 The appellant submitted copies of RA Bills in respect of work related to Toilet repairing painting, plaster and drainage provided to District R & B Sub Division and Division Office, Rajkot in respect of works mentioned at Sr. No.30 and 31 of Annexure A-II. As per the said RA bills the date of written order to commence work was given on 06.02.2015. Thus, the work carried out by the appellant is eligible for exemption as per Sr. No.12 of Notification No.25/2012-ST.

8.4 With Exhibit-F2A, the appellant submitted details of work works contract services at Sr.No.17 to 22 and 24 to 29, 32, 34 to 38 of Annexure-



II to the show cause notice. The contention of the appellant with regard to the nature of work done were 'original work' and therefore, service tax was payable only on forty percent of total amount charged for the works contract. The description of the works mentioned in Exhibit-F2A are as under:

Sr. No.	Name of service receiver	Nature of work
17	Office of the Executive Engineer, City (R&B) Division, Rajkot	SR to non Resi Tagor-Marcony Hostel at Rajkot, out plastering, colour work and renovation work
18		
19	Office of the Executive Engineer, City (R&B) Division, Rajkot	Pro ACE paint to Hemugadhvi Natyagruh at Rajkot
20	Rajkot Municipal Corporation	Repair work of Kavi Narmad Primary School No.79
21	Office of the Executive Engineer, City (R&B) Division, Rajkot	S.R to Non Resi Kotak Science at Rajkot, window grill fitting in gap, toilet repairs
22	Office of the Executive Engineer, City (R&B) Division, Rajkot	Painting two coats on new steel and other metal surface with enamel paint, brushing, interior to give an even shade including clearing the surface of all dirt, dust and other foreign matter.
24	The Sandesh Ltd	Work order/bill not submitted
25	Assistant Research Scientist, Research Sub-station, Navsari Agri University	Work order/bill not submitted
26		
27		
28		
29	Executive Engineer	Work order/bill not submitted
32	Office of the Executive Engineer, City (R&B) Division, Rajkot	Outside colour, flooring, railing, kitchen platform, shutter, water supply drainage of Homeguard campus at Rajkot
34	Rajkot Municipal Corporation	Construction of compound wall for swimming pool
35	-do-	Colour work of Mavdi Fire Station
36	-do-	Construction of new compound wall after removing old wall for Padmakubarba Hospital
37	-do-	-do-

8.5 On perusal of the documents produced and considering the nature of work done, only the works at Sr. No.34, 36 and 37 can be considered as original work as new compound walls were being constructed. Therefore the



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service tax payable is on 40% of the value which comes to Rs. 1,68,717/- as under:

Sr. No	Service Receiver	Total amount	Value of taxable service	Service tax payable
34	Rajkot Municipal Corporation	384886	153954	22323
35		264210	105684	15324
37		2259819	903928	131070
			Total	168717

8.6 In rest of the cases, the nature of work done cannot be considered as original work. The service tax payable in respect of 'works contract' service is determined as per Rule 2A of Service Tax (Determination of Value) Rules, 2006 and the term 'original work' is defined in the said rules. Rule 2A(ii) of Service Tax (Determination of Value) Rules, 2006 reads as under:

ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely :-

A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent of the total amount charged for the works contract;

[Provided that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty per cent. of the total amount charged for the works contract.]

(B) in case of works contract, not covered under sub-clause (A), including works contract entered into for, -

(i) maintenance or repair or reconditioning or restoration or servicing of any goods; or

(ii) maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property,

service tax shall be payable on seventy per cent. of the total amount charged for the works contract.]

Explanation 1. - For the purposes of this rule,-

(a) "original works" means-

(i) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

8.7 As per the above provision of law, it is evident that all new construction, additions and alternation to damaged structures on land that are required to make them workable are considered as 'original work'. In the present cases as mentioned at table above, the works carried out by the appellant are not new construction, additions and alternation to damaged structures on land that are required to make them workable, but they are in the nature of maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property and hence the service tax is



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required to be paid as per Rule 2A(ii)(B) of Service Tax (Determination of Value) Rules, 2006.

8.8 In view of the above findings, the demand of service tax to the extent of Rs. 62,560/- as per Sr. No.15,16,30 and 31 of Annexure-A-II is dropped and service tax demand is reduced to Rs.1,68,717/- in respect of demand at Sr. No.34, 35 & 37 of Annexure-A-II of the show cause notice. Accordingly the revised service tax liability as per Annexure-A-II comes to Rs. 20,43,712/-

9.1 In respect of Annexure A-III of the notice, the appellant submitted Exhibit-F3 with which they have submitted following documents.

Sr. No.	Documents	Nature of work
5 & 6	work order dated 17.10.2015 of Junagadh Agricultural University, Junagadh	Renovation of staff quarters
10	Work dated 22.03.2016 issued by Chief Engineer, PIU, Gandhinagar	Repairing to Outer & Internal Drainage System & Plumbing System in OPD building at PDU Hospital Rajkot
17,18,19,20	Bill No.153 dated 09.08.2016, 182 dated 17.09.2016, 205 dated 21.10.2016, 264 dated 26.12.2016	Repairing work in dormitory at Bedinaka, Khodiyar para and near Aji Chowkdi for Rajkot Municipal Corporation
21,22	Bill No. 557 dated 28.09.2016 and 673 dated 25.10.2016	Repairing of Dr. Baba Saheb Ambedkar Community hall near Jilla Garden
26	RA Bill	'SR to Home Guard Campus at Rajkot (Outside colour, flooring, railing, kitchen platform, shuttered, water supply drainage)
29	Bill No.189/23.05.2016	Colour work of Mevdi Fire Station
30	575/23.08.2016	Fencing work of reservation plot
31	631/21.09.2016	Construction of wall at garden behind HUDCO quarters
32	583/03.10.2016	Construction of compound wall for swimming pool
33	908/08.12.2016	Fencing work of reservation plot

9.2 The contention of the appellant in respect of the above works is that they have carried out 'original work' within the meaning given at clause (a) of Explanation 1 to Rule 2A(ii)(B) of Service Tax (Determination of Value) Rules, 2006 and not work covered by sub-clause (B) of the said rule.



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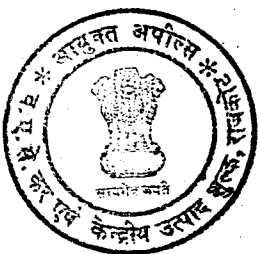
However, on carefully going through the nature of work done, I find that only the works mentioned at Sr.No.30 to 33 can be considered as original work and the rest of the works are in the nature of repairing work and hence the service tax liability to be determined as per Rule 2A(ii)(B) of Service Tax (Determination of Value) Rules, 2006. The service tax liability is re-determined as under:

Sr. No.	Total value	Taxable value @40%	Service tax @15%
30	354555	141822	21273
31	323597	129439	19416
32	193671	77468	11620
33	261455	104582	15687
		Total	67997

9.3 Accordingly, the service tax in respect of services as per Annexure-III is re-determined at Rs. 41,73,979/-.

10. The contention of the appellant in respect of entry at Sr.No.1 of Annexure-IV is that the expenditure of the said work is debited for the year 2011-12 and therefore, no service is payable on the said work as the same pertains to the work order prior to 01.03.2015. They have also contended that as per works contract order and nature of work carried out, same are 'original work' within the meaning given at clause (a) of Explanation 1 to Rule 2A(ii)(B) of Service Tax (Determination of Value) Rules, 2006 and hence service tax was payable only on forty percent of the total amount charged for the works contract. However, on perusal of the work order dated 22.03.2016, I find that the nature of work is repairing to outer & internal drainage system & plumbing system in OPD building at PDU Hospital Rajkot and they cannot be considered as 'original work' as per rule 2A of Service Tax (Determination of Value) Rules, 2006. Further, the work awarded is on 22.03.2016 and hence there is no exemption to the said work. Merely because the expenditure of the work is debited 2011-12, it does not make it eligible for exemption under Notification No.25/2012-ST as the exemption under Sr. No.12 of Notification No.25/2012-ST which was omitted vide notification No.6/2015-ST w.e.f 01.04.2015 and reintroduced vide Notification No.9/2016-ST dated 01.03.2016 and given retrospective effect vide Section 102 of the Finance Act, 1994 is for the contract entered into before 01.03.2015.

11. In view of the above, the revised service tax liability of the appellant



is as under:

Annexure to Show cause notice	Amount of Service tax confirmed as per order-in-original	Amount of service tax confirmed as per this order	Amount of service tax dropped
Annexure-A-I	130781	74682	56099
Annexure-A-II	2359347	2043712	315635
Annexure-A-III	4275974	4173979	101995
Annexure-A-IV	125980	125980	0
	6892082	6418353	473729

12. Now coming to the contention of the appellant that they are liable to pay only 50% of service tax as the service is provided to body corporate, I find that the appellant had made the same relying upon the case laws of *G.N. Constructions-2020 (37) GSTL.305 (Tri-Chan)* and *Bharat Bhushan Gupta & Co-2016 (44) STR.195 (P&H)*. The said case laws are not squarely applicable in the present circumstances of the case as they were delivered in the context of law prevailed in the state of Punjab. In that case the Tribunal and High Court have discussed *Punjab Town Improvement Act, 1922 and The Punjab Roads and Bridges Development Board Act, 1998*. In the present case, term 'body corporate' has to be understood within the frame work of Finance Act, 1994. The word "Body Corporate" was defined under Section 65(14) of Finance Act, 2014 which reads as under :-

"body corporate" has the meaning assigned to it in clause (7) of Section 2 of the Companies Act, 1956 (1 of 1956)";

13. The Finance Act, 1994 was restructured and Section 65 was omitted vide Ntn. No. 20/2012 S.T., dated 5-6-2012 w.e.f. 1-7-2012. There is no definition in body corporate given in the Finance Act, 1994 w.e.f. 1-7-2012. The Companies Act, 1956 was replaced by Companies Act, 2013. Section 2(11) of Companies Act, 2013 define the word "body corporate" as under :-

"body corporate" or "corporation" includes a company incorporated outside India, but does not include —

(i) *a co-operative society registered under any law relating to co-operative societies; and*

(ii) *any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;*

14. In the present case, the recipients of the service are not falling under above category and hence the contention of the appellant, that PWD is a body corporate, is not tenable.

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15. As regarding the contention of the appellant that demand is time barred as there is no suppression of facts etc, I find that the contravention of law on their part have been committed with the deliberate intent to evade payment of service tax by way of not obtaining the service tax registration etc. Had inquiry not been conducted by the department the violation and contravention of law by the appellant would not have come to the notice of the department. Hence the extended period of limitation has been correctly invoked. Consequently, the demand of interest under Section 75, imposition of penalty under Section 78 and penalty imposed under Section 77(1)(a) and 77(1)(b) of the Finance Act, 1994 are sustainable.

16. In view of the above, I set aside the demand of service tax to the tune of Rs.4,73,729/- and uphold the demand of service tax of Rs. 64,18,353/-. I set aside penalty of Rs.4,73,729/- and uphold penalty of Rs. 64,18,353 imposed under Section 78 of the Finance Act, 1994. I uphold the penalty imposed under Section 77(1)(a) and 77(1)(b) of the Finance Act, 1994. The impugned order shall stand modified accordingly.

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

17. The appeal filed by the Appellant is disposed off as above.

सत्यापित / Attested

Joseph
Superintendent
Central GST (Appeals)
Rajkot

Shiv Pratap Singh
30-01-2023
(शिव प्रताप सिंह/ SHIV PRATAP SINGH)
आयुक्त (अपील)/Commissioner (Appeals)

By R.P.A.D.

To आर के कन्स्ट्रक्शन. खोडियार कृपा, ओप्ला नवनीत डाइरी नियर अयोध्या सोसाइटीहर. धाम मार्ग, राजकोट-360 003।	M/s R.K. Constuction, Khodiyar Krupa, Opp. Navnit Dairy, Nr.Ayodhya Society, Har Dham Marg, Rajkot-360 003
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प्रतिलिपि :-

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद।
- 2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट
- 3) ऊप आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, जामनगर -I मंडल, राजकोट आयुक्तालय,
- 4) गार्ड फाइल।

