

पालिका आदेश



: 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 / 2<sup>nd</sup> Floor, GST Bhavan,  
रेस कोर्स रिंग रोड, / Race Course Ring Road,  
राजकोट / Rajkot - 360 001

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



सत्यमेव जयते

रजिस्टर्ड डाक ए.डी. द्वारा :-

DIN- 20230564SX000000D665

क	अपील / फाइल संख्या / Appeal / File No.	मूल आदेश सं / OIO No.	दिनांक / Date
	62/APP/COM/ST/1532/2022	66/JC(MAN)/2021-22	31-03-2022

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

**RAJ-EXCUS-000-APP-116-2023**

आदेश का दिनांक / Date of Order:	15.05.2023	जारी करने की तारीख / Date of issue:	22.05.2023
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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. Shiy Developers C/o Prakash Akbari, 502, Madhukunj Flats, Ayodhya  
Nagar, B/H Aarsh Vidya Mandir, New 150 Ft. ring Road (Munjaka), Rajkot.**

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 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 अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को 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-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 तक अथवा 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 नियमवानी, 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 मांग, ब्याज की मांग 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 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 fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied is upto 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 नियमावली, 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 of 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, का भुगतान किया जाए, बशर्ते कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपये 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 ली 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 अर्ज़ी 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 को पुनरीक्षण आवेदन :  
**Revision application to Government of India:**  
इस आदेश की पुनरीक्षणयाचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथमपारंतुक के अंतर्गत अवर 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 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 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 an 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 ड्यूटी क्रेडिट 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 समायाचिधि 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 संप्रेषण 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 is more than 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 पट्टी 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. 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 टिकिट लगा होना चाहिए। /  
One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs.6.50 as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.  
(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 ओर 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.cbec.gov.in](http://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](http://www.cbec.gov.in)



**:: अपील आदेश ::**

**:: ORDER-IN-APPEAL ::**

M/s. Shiv Developers, C/o Prakash Akbari, 502, Madhukunj Flats, Ayodhya Nagri, B/h Arsh Vidhya Mandir, New 150 feet Ring Road (Munjka), Rajkot 360005 (hereinafter referred to as "Appellant") has filed present Appeal against Order-in-Original (OIO) No. 66/JC(MAN)/2021-22 dated 30.03.2022 (hereinafter referred to as 'impugned order') passed by the Joint Commissioner, Central GST, Rajkot (hereinafter referred to as 'adjudicating authority').

2. The facts of the case, in brief, are that Income Tax Department provided data/details of various Income Tax payers, who in their Form 26AS for financial year 2014-15, 2015-16 & 2016-17 declared to have earned income by providing services classified under various service sectors. The jurisdictional division office called for the information/ documents. No reply/ response was received from the Appellant and in absence of any detail/information/documents from the appellant, for quantification of taxable value, no option was left but to invoke the provision of Section 72 of the Finance Act, 1994 i.e. "Best Judgement Assessment" to determine the amount to be demanded. The amount demanding the Service Tax was determined on the basis of data/ details provided by the Income Tax department and culminated into Show Cause Notice dated 29.09.2020 proposing to demand Service Tax of Rs. 58,49,616/-, including all cesses under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as 'the Act') with interest under Section 75 of the Act, and proposing to impose penalty under Section 77(1)(a), 77(2), 77(1)(c) and Section 78 of the Act.

3. The adjudicating authority vide the impugned order confirmed Service Tax demand of Rs. 58,49,616/- including all cesses by invoking proviso to section 73(1) of the Act with interest under Section 75 of the Act. The adjudicating authority imposed penalties of Rs. 10,000/- under Section 77(1)(a) of the Act. The penalty of Rs. 58,49,616/- was also imposed upon the Appellant under Section 78 of the Act.

4. The Appellant has preferred the present appeal on 07.06.2022 on various grounds mainly as stated below:

*The adjudicating authority has wrongly confirmed demand of Service Tax of Rs. 58,49,616/- under Section 73(1) of the Act, erred in valuation of taxable Services, erred in not allowing the benefit of Notification No. 25/2012 dated 20.06.2012, erred in demand of interest u/s 75 of the Act, erred in demanding penalty u/s 77(1)(a) and 78 of the Act.*

5. Personal hearing in the matter was held on 13.04.2023 which was attended Shri Kalpesh Parekh, CA wherein he handed over additional written submissions with supporting documents in a box file. He submitted that the appellant has provide Work contract Services to Government authorities as contractor and in some cases as sub-contractor. Such services were exempt under Notification No. 25/2012-Service Tax. He handed over additional written submissions with supporting documents and reconciliation with Form 26AS. Based on the same he requested to set aside the Order-In-Original and to allow the appeal.



वी. एस. राणा / B. S. RANA  
अधीक्षक / Superintendent  
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CGST Appeals, Rajkot

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6. Appellant in his additional written submissions has submitted they are engaged in providing work construction services and they had provided work construction services to Governmental authority and services were exempted as per Notification No. 25/2012 dated 20.06.2012, as amended. Appellant has requested to quash the Order-In-Original on the ground of limitation as extended period can only be invoked where there is situation of fraud, collusion, misstatement, concealing information with willful intent to defraud revenue. Appellant submitted Audit Report, 26AS, work order of Governmental authority along with reconciliation of that work order with entries reflected in Form 26AS. Appellant submitted that it took time to collect all documents from Government authority, as it took multiple follow ups due to data pertaining to old time. Appellant submitted R.A. bills along with reconciliation which were collected from respective authority who have given the work orders to the appellant.

7. I have carefully examined the show cause notice, impugned order, appeal memorandum and written submission and additional submission of the Appellant. Adjudicating authority has calculated the taxable income as Rs. 4,28,33,945/-. Service Tax quantified on value of Rs. 4,28,33,945/- comes to Rs. 58,49,616/-. The issue to be decided in the present appeal is whether amount of Rs. 4,28,33,945/- reflected as taxable value in impugned order are taxable or otherwise. I find that the Appellant has filed appeal requesting to set aside the impugned order with demand of Service Tax amounting to Rs. 58,49,616/- with Interest and penalties under the Act.

8. Regarding amount of Rs. 4,28,33,945/-, considered as taxable with reason - unexplained income, appellant, vide their written submission, has provided reconciliation statement, copies of work orders, 26AS, Audit reports etc., in support of their claim considering the work contract as exempted as per entry No. 12(e) and 13(a) of Mega Exemption Notification No. 25/2012 dated 20.06.2012. Details as under:

Financial year wise reconciliation of income received and particulars of work/service:

### 2014-15

Sr. No.	Particular of work	Amount (Rs.)	Exempt under entry No. of Notification No. 25/2012
1.	New Construction of Sub center building with compound wall at Makansar, Trajpar & Ravapar (2) in various Taluka, Rajkot	46,68,163/- (20,00,000/- + 26,68,763/-)	12(a)
2.	New Construction of Staff Quarters D-Type (1 No.), D1 Type (1 No) and C-Type (5 Nos) at CHC Tankara, District - Rajkot	79,79,083/- (20,79,672/- + 18,34,765/- + 4,21,906/- + 9,14,584/- + 27,28,156/-)	12(f)
3.	New Construction of Aangwandi (Nandgarh) Building in various Village of Wankaner (Package-Raj/Aanganwadi (11 Nos.) Taluka- Wankaner	63,29,871/- (23,77,935/- + 15,20,860/- + 24,31,076/-)	12(a)
<b>Total</b>		<b>1,89,77,717/-</b>	



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बी. एस. रणा / B. S. RANA  
अधीक्षक / Superintendent  
के. व. एवं सेवा कर अपील, राजकोट  
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**2015-16**

Sr. No.	Particular of work	Amount(Rs.)	Exempt under entry No. of Notification No. 25/2012
1.	New construction of sub center building with compound wall at Ambarwadi, Mahika and Madhavpur in various Taluka, Dist - Rajkot	68,94,552/- (5,57,859/- + 23,44,836/- + 39,91,857/-)	12A(a)
2.	Construction of Road (Diversion Road) at Nyari Bridge near Rampar village	8,98,296/-	13(a)
3.	Providing lowering, laying, jointing and resting work for Sewerage Network & House connection System under Amrut Yojana at Ward No. 4	22,25,500/-	12(e)
4.	Providing lowering, laying, jointing and resting work for Water Pipe Line Network & House connection System at Ward No. 8	8,80,000/-	12(e)
5.	Repairing of Water Pipeline at Nyari Sinchai Yojna	30,62,409/-	12(e)
6.	New Construction of Sub center building with compound wall at Makansar, Trajpar & Ravapar (2) in various Taluka, Rajkot	8,48,000/-	12A(a)
7.	~	84,038/-	
	<b>Total</b>	<b>1,48,92,795/-</b>	

**2016-17**

Sr. No.	Particular of work	Amount(Rs.)	Exempt under entry No. of Notification No. 25/2012
1.	New Construction of Sub center building with compound wall at Panchasar, Wankaner, Rajkot	22,07,812/- (10,75,890/- + 11,31,922/-)	12A(a)
2.	~	93,946/-	
3.	Repairing & Installation of Water Pipeline at Lalpari and Randarda Sinchai Yojna	66,61,675/-	12(e)
	<b>Total</b>	<b>89,63,433/-</b>	

Summary of total relevant period is as under:

Period	Amount (Rs.)
2014-15	1,89,77,717/-
2015-16	1,48,92,795/-
2016-17	89,63,433/-
<b>Total</b>	<b>4,28,33,945/-</b>

8.1 Entry No. 12(a), 12(e), 12(f), 12A(a), 13(a) & 29(h) of Mega Exemption Notification No. 25/2012 dated 20.06.2012 reads as under:

**12.** Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

(b) .....

(c) .....

(d) .....

(e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or

(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of 65B of the said Act.

Note: (a) and (f) of entry 12 were omitted vide Notification No. 06/2015 dated 01.03.2015.

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**13.** Services provided by way of construction, erection, commissioning,

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CGST Appeals, Rajkot

installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-

(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;

**29. Services by the following persons in respective capacities –**

(h) sub-contractor providing services by way of works contract to another contractor providing works contract services which are exempt;

8.1.1. In view of aforementioned reconciliation and relevant entry/ies of Notification No. 25/2012, appellant has claimed exemption vide Entry No. 12(a)/(f)/(e), 12A(a), 13(a) & 29(h). Entry No.12(a) and 12(f) were omitted vide Notification No. 06/2015 dated 01.03.2015. However, it is seen that exemption is claimed under entry No. 12(a) & 12(f) in F.Y. 2014-15 and not in F.Y. 2015-16 & 2016-17. Going through copies of work orders submitted by the appellant, I find that all the work orders are entered into before 01.03.2015. Therefore, exemption benefit linked with these claimed entries is available for F.Y. 2014-15, 2015-16 & 2016-17.

8.1.2. In financial Year 2015-16 & 2016-17 there are certain income where no exemption is claimed, as detailed hereunder:

Financial Year	Amount (Rs.)
2015-16	84,038/-
2016-17	93,946/-

In this regard, it is observed that since there was no dutiable income in F.Y. 2014-15, threshold limit benefit is available for the successive financial year. For the income amounting to Rs. 84,038/- & Rs. 93,946/- for F.Y. 2015-16 & 2016-17 respectively, as the appellant has not claimed exemption benefit, these amounts could be considered as taxable. However, as per provisions of Notification No. 33/2012-Service Tax dated 20.06.2012, aggregate value of taxable services below 10 lakhs rupees is exempted from the whole of the Service Tax during a financial year. Relevant portion of Notification No. 33/2012-ST dated 20.06.2012 is reproduced below:

NOTIFICATION NO 33/2012-ST, Dated: June 20, 2012

In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Finance Act), and in supersession of the Government of India in the Ministry of Finance (Department of Revenue) notification No. 6/2005-Service Tax, dated the 1st March, 2005, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide G.S.R. number 140(E), dated the 1st March, 2005, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts taxable services of aggregate value not exceeding ten lakh rupees in any financial year from the whole of the service tax leviable thereon under section 66B of the said Finance Act:

Explanation.- For the purposes of this notification,-

(A) .....

(B) "aggregate value" means the sum total of value of taxable services charged in the first consecutive invoices issued during a financial year but does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under section 66B of the said Finance Act under any other notification."

8.1.3. Therefore, benefit of threshold limit as per Notification No. 33/2012-ST dated 20.06.2012 is available to the taxable amount for the successive Financial Year i.e.



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महोदय / Attested  
 बी. एस. रणा / B. S. RANA  
 अधीक्षक / Superintendent  
 के. व. एवं सेवा कर अपील, राजकोट  
 CGST Appeals, Rajkot

2015-16 & 2016-17 (relevant period). Thus, residual income of Rs. 84,038/- (F.Y. 2015-16) & 93,946/- (F.Y. 2016-17) is exempted from levy of Service Tax. Therefore, demand of Service Tax on it is not sustainable.

9. In the impugned order amount of Rs. 4,28,33,945/- was considered as taxable amount. When compared with the reconciliation worksheet and with documentary evidences produced by the appellant and relevant entries of aforementioned exemption Notification, I am of the considered view that the income of Rs. 4,28,33,945/- held as taxable in impugned order is fully exempted from Service Tax. As such, the demand of Service Tax on value of service of Rs. 4,28,33,945/-, is not sustainable and consequently the interest and penalty on it also is not sustainable. Accordingly, I drop the demand of Service Tax on value of Rs. 4,28,33,945/-.

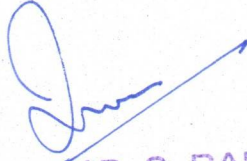
10. I, therefore, set aside the confirmation of Service Tax demand. Since, the demand is set aside, recovery of interest under Section 75 and imposition of penalty under Section 77 and 78 are also required to be set aside and I order accordingly.

11. In view of above, the impugned order dated 01.04.2022 is set aside and the appeal is allowed.

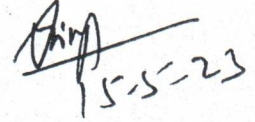
12. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

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

**सत्यापित / Attested**



**बी. एस. राणा / B. S. RANA**  
अधीक्षक / Superintendent  
के. व. एवं सेवा कर अपील, राजकोट  
CGST Appeals, Rajkot



**(शिव प्रताप सिंह)**  
(Shiv Pratap Singh)  
**आयुक्त (अपील)**  
Commissioner (Appeals)

By R.P.A.D.

To, M/s. Shiv Developers, C/o Prakash Akbari, 502, Madhukunj Flats, Ayodhya Nagri, B/h Arsh Vidhya Mandir, New 150 feet Ring Road(Munjka), Rajkot 360005	सेवा में, मे. शिव डेवलपर्स, 502, मधुकुंज फ्लैट्स, अयोध्या नगरी, आर्ष विध्या मंदिर के पीछे, नया 150 फुट रोड, राजकोट, गुजरात - 360005 ।
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**प्रतिलिपि :-**

- 1) मुख्य आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गुजरात क्षेत्र, अहमदाबाद को जानकारी हेतु।
- 2) प्रधान आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट आयुक्तालय, राजकोट को आवश्यक कार्यवाही हेतु।
- 3) अपर/संयुक्त आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट, को आवश्यक कार्यवाही हेतु।
- 4) सहायक आयुक्त, वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, राजकोट-I मण्डल को आवश्यक कार्यवाही हेतु।
- 5) गार्ड फ़ाइल।

