



सत्यमेव जयते

आयुक्त का कार्यालय
Office of the Commissioner
केंद्रीय जीएसटी, अपील अहमदाबाद आयुक्तालय
Central GST, Appeals Ahmedabad Commissionerate
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आजादी का
अमृत महोत्सव

By Regd. Post

DIN No.: 20230164SW0000501781

(क)	फ़ाइल संख्या / File No.	GAPPL/COM/STP/754/2022-APPEAL / 7578 - 82
(ख)	अपील आदेश संख्या और दिनांक / Order-In-Appeal No. and Date	AHM-EXCUS-003-APP-096/2022-23 and 24.01.2023
(ग)	पारित किया गया / Passed By	श्री अखिलेश कुमार, आयुक्त (अपील) Shri Akhilesh Kumar, Commissioner (Appeals)
(घ)	जारी करने की दिनांक / Date of issue	25.01.2023
(ङ)	Arising out of Order-In-Original No. PLN-AC-STX-08/2021-22 dated 17.01.2022 passed by the Assistant Commissioner, CGST, Division-Palanpur, Gandhinagar Commissionerate	
(च)	अपीलकर्ता का नाम और पता / Name and Address of the Appellant	M/s Shivam Infra Project, 18, Shivam Complex, Bus Stand Road, Chanasma, Patan, Gujarat-384220

कोई व्यक्ति इस अपील-आदेश से असंतोश अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील अथवा पुनरीक्षण आवेदन प्रस्तुत कर सकता है, जैसा कि ऐसे आदेश के विरुद्ध हो सकता है।

Any person aggrieved by this Order-in-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way.

भारत सरकार का पुनरीक्षण आवेदन:-

Revision application to Government of India:

- (1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अतत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अधीन सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली: 110001 को की जानी चाहिए :-

A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :-

- (क) यदि माल की हानि के मामले में जब ऐसी हानिकार खाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

In case of any loss of goods where the loss occur 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.



(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित 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.

(ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(घ) अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं 2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

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 and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतरमूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ का मुख्य शीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी 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.

(3) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रूपये या उससे कम होतो रूपये 200/- फीस भुगतान की जाए और जहाँ संलग्नरकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

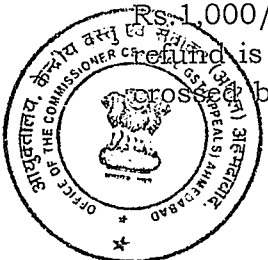
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35-बी/35-इ के अंतर्गत:-
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

(2) उक्तलिखित परिच्छेद में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में 2nd माला, बहुमाली भवन, असरवा, गिरधरनागर, अहमदाबाद-380004।

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at 2nd floor, Bahumali Bhawan, Asarwa, Girdhar Nagar, Ahmedabad: 380004. In case of appeals other than as mentioned above para.

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.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / 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 Asstt. Registrar of a branch of any nominate public



sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated.

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number 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 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची -1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूलआदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रतिपर रू 6.50 पैसे 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 adjournment authority shall a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन और संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) एके प्रति अपीलो के मामले में कर्तव्यमांग (Demand) एवं दंड (Penalty) का 10% पूर्व जमा करना अनिवार्य है। हालांकि, अधिकतम पूर्व जमा 10 करोड़ रुपए है। (Section 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994)

केन्द्रीय उत्पाद शुल्क और सेवाकर के अंतर्गत, शामिल होगा कर्तव्य की मांग (Duty Demanded)।

- (1) खंड (Section) 11D के तहत निर्धारित राशि;
- (2) लिया गलत सेनवैट क्रेडिट की राशि;
- (3) सेनवैट क्रेडिट नियमों के नियम 6 के तहत देय राशि।

यह पूर्व जमा 'लंबित अपील' में पहले पूर्व जमा की तुलना में 'अपील' दाखिल करने के लिए पूर्व शर्त बना दिया गया है।

For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (Section 35 C (2A) and 35 F of the Central Excise Act, 1944, Section 83 & Section 86 of the Finance Act, 1994).

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.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

In view of above, 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."



अपीलिय आदेश / ORDER-IN-APPEAL

The present appeal has been filed by M/s. Shivam Infra Project, 18, Shivam Complex, Bus Stand Road, Chanasma, Patan - 384220 (hereinafter referred to as the appellant) against Order in Original No. PLN-AC-STX-08/2021-22 dated 17.01.2022 [hereinafter referred to as "*impugned order*"] passed by the Assistant Commissioner, CGST, Division: Palanpur, Commissionerate: Gandhinagar [hereinafter referred to as "*adjudicating authority*"].

2. Briefly stated, the facts of the case are that the appellant were holding Service Tax Registration No. AAABS6644LSD001 for providing Works Contract Service. As per the information received from the Income Tax department, discrepancies were observed in the total income declared in Income Tax Returns/Form 26AS of the appellant for the period F.Y. 2016-17 vis-à-vis those in the ST-3 Returns filed for the said period. In order to verify the said discrepancies as well as the fact whether the appellant had discharged their Service Tax liabilities during the period F.Y. 2016-17, a letter dated 23.05.2020 was issued to the appellant. They failed to file any reply to the letter. As per ITR-5 of the appellant for the F.Y. 2016-17, an amount of Rs. 2,50,16,535/- was shown towards sale of services. It was observed that the nature of service provided by the appellant were covered under the definition of 'Service' as per Section 65 B(44) of the Finance Act, 1994 (FA, 1994) and during the relevant period, they were taxable. In the absence of any other available data for cross-verification, the Service Tax liability of the appellant for the F.Y.-2016-17 was determined on the basis of 'Sales of Services' shown in the ITR-5 of the relevant period and was calculated as per details below :

Sr. No	Details for F.Y. - 2016-17	(Amount in Rs.)
1	Total Income as per ITR-5	2,50,16,535 /-
2	Income on which Service Tax paid	0 /-
3	Difference of value (Sr. No. 1-2)	2,50,16,535 /-
4	Amount of Service Tax alongwith Cess not paid /short paid (12% Basic + 2% E.Cess+1% H. E. Cess)	Rs.37,52,480/-



3. The appellant was issued a Show Cause Notice vide F. No. AR-V/SHIVAM INFRA PROJECT/ST-3-SCN/2020-21 dated 17.06.2020 (in short 'SCN') wherein it was proposed to:

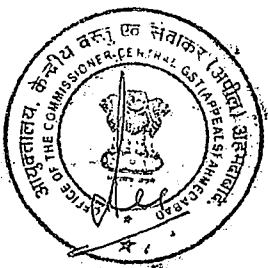
- Demand and recover service tax amounting to Rs. 37,52,480/- under the proviso to Section 73 (1) of the Finance Act, 1994 alongwith Interest under Section 75 of the Finance Act, 1994 ;
- Impose penalty under Section 76, 77(2), 77(3)(C) and 78 of the Finance Act, 1994;

4. The said Show Cause Notice was adjudicated vide the impugned order wherein:

- demand for Rs. 14,32,568/- was confirmed under proviso to Section 73(1) of the Finance Act, 1994 alongwith interest under section 75 of the Finance Act, 1994.
- Penalty amounting to Rs.1,43,257/- was imposed under Section 76 of the Finance Act, 1994;
- Penalty of Rs.10,000/- was imposed under the provisions of Section 77(1) (C) of the Finance Act, 1994 read with Section 174 of the Goods and Services Act, 2017.
- Penalty of Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994 ;
- Penalty amounting to Rs. 14,32,568/- was imposed under Section 78 of the Finance Act, 1994 with option for reduced penalty vide clause (ii);

5. Being aggrieved with the impugned order, the appellant have filed the instant appeal on following grounds:

- They had carried out works as sub-contractors of M/s Sintex Industries Ltd as per the terms and conditions of M/s Sintex Industries Ltd. The work pertained to construction of Sub Health Centre, NHRM Project of Rajasthan Government. The works carried out by them, being Government Contract, are exempted in terms of Notification No. 25/2012-ST, dated 20.06.2012 as amended.
- Work orders and Invoices were submitted by them which clearly show that work carried out by the appellant were with regard to construction of sub health centre and therefore eligible for abatement/RCM in terms of



Notification No. 30/2012. Form 26AS submitted by them also contained the fact that the income was received from Sintex Industries Ltd. They also furnished a table for the re-worked out amount of demand, as under:

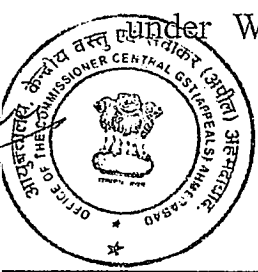
Sr. No	Details	Amount (2016-17)
1	Total Income as per ITR	Rs. 2,50,16,535/-
2	Less: Abatement as per Notification No. 24/2012	Rs. 1,50,09,921/- (2,50,16,535 * 60%)
3	Less Reverse Charge as per Notification No. 30/2012	Rs. 50,03,307/- (2,50,16,535*40%*50%)
4	Net	Rs. 50,03,307/-
5	Rate of Service Tax	15%
6	Tax including value	Rs.6,52,605/-

- They have submitted copies of Form 26AS, Work Orders and Invoices pertaining to the period F.Y. 2016-17.

6. Personal Hearing in the case was held on 15.12.2022. Shri Arpan Yagnik, Chartered Accountant, appeared on behalf of the appellant for the hearing. He reiterated the submissions made in the appeal memorandum.

7. I have gone through the facts of the case, submissions made in the Appeal Memorandum and during personal hearing as well as materials available on records. The issue before me to decide is whether the impugned order issued by the adjudicating authority, confirming the demand of Service Tax amounting to Rs. 14,32,568/- alongwith interest and imposing penalties, is legal and proper or otherwise. The demand pertains to the period F.Y. 2016-17.

8. It is observed from the case records that the appellant were registered with the service tax department and had filed Nil return for the F.Y. 2016-17. They are proprietorship firm. It is further observed that the SCN in the case was issued based on the data received from the Income Tax department and as per the ITR-5, they had shown an income of Rs. 2,50,16,535/- during the F.Y. 2016-17. As the appellant had not responded to the communications from the department, the liability of the appellant was determined on the basis of income reported in ITR-5 and at full rate without considering any abatement. No other grounds have been taken in the SCN for arriving at the tax liability of the appellant. It is further observed that the appellant had filed their ST-3 Returns under Works Contract Service and that they are a proprietorship concern,



therefore the quantification of demand in the instant SCN is erroneous in as much as the services under works contract are subject to abatement and also that the tax liability of the appellant, being proprietorship firm, would also be under reverse charge mechanism. Therefore, I find that the SCN issued in the case is vague. I also find it relevant to refer to the CBIC Instruction dated 26.10.2021, wherein at Para-3, it is instructed that:

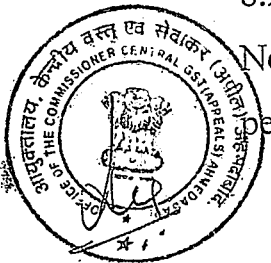
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3. It is once again reiterated that instructions of the Board to issue show cause notices based on the difference in ITR-TDS data and service tax returns only after proper verification of facts, may be followed diligently. Pr. Chief Commissioner /Chief Commissioner (s) may devise a suitable mechanism to monitor and prevent issue of indiscriminate show cause notices. Needless to mention that in all such cases where the notices have already been issued, adjudicating authorities are expected to pass a judicious order after proper appreciation of facts and submission of the noticee

...

8.1. The appellant had, before adjudicating authority, contended that they have acted as Sub-Contractors to original Contractor – M/s Sintex Industries Ltd., in providing ‘Works Contract Service’ pertaining to NRHM (National Rural health Mission) Scheme of Government of India at various places in the state of Rajasthan. The work undertaken by them were in the nature of ‘Construction of Plinth flooring work, Electric work and erection of prefabricated structure’ in relation to establishment of ‘Sub Health Centres’ under NHRM Project Rajasthan. They had claimed exemption under Serial No. 12 A of the Mega exemption Notification No. 25/2012 – ST dated 20.06.2012, as amended. They had also contended that the services provided by them falls under the definition of ‘Original Works’ and is eligible for abatement in terms of Rule 2A (ii)A of the Service Tax (Determination of Value) Second Amendment Rules, 2012 (as amended). They had further contended that they had provided services to ‘Body Corporate’ and hence were liable to pay only 50% of the value and the rest of the liability was to be discharged by M/s Sintex, being recipient of service, under reverse charge mechanism under Notification No. 30/2012 – ST dated 20.06.2012.

8.2. The adjudicating authority has denied the claim of exemption under Notification No. 25/2012 by holding that they had provided services to private person and not to any government and also because of the fact that three work

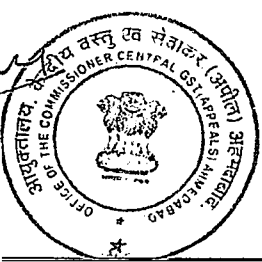


orders produced by them pertained to period after 1.3.2015 and hence were not eligible for exemption. He has however considered their claim for work contracts under original work and had considered 40% of the amount for which contracts were provided and also their claim for liability under reverse charge. He has quantified the demand based on the three work orders submitted by the appellant amounting to Rs. 1,93,32,600/- and treated the rest of the amount, i.e. Rs. 56,83,985/-, for which no work order was given, to be taxed at full value and arrived at the tax liability of Rs. 14,32,568/-, which he has confirmed along with interest and penalty.

9. It is observe from the documents contained in the appeal memorandum that the services provided by the appellant were in the nature of 'Construction of Plinth flooring work, Electric work and erection of prefabricated structure' in relation to establishment of 'Sub Health Centres' under NHRM Project Rajasthan. The services provided by the appellant falls under the definition of 'Original Works' and is eligible for abatement in terms of Rule 2A (ii)A of the Service Tax (Determination of Value) Second Amendment Rules, 2012 (as amended). The appellant has provided three work orders amounting to Rs. 1,93,32,600/- before the adjudicating authority, which has been considered as original work and consequently abatement of 60% have been considered on this amount while calculating their service tax liability. It is further observed from Form 26 AS for F.Y. 2016-17 that the appellant had received an amount of Rs. 2,34,99,048/- from M/s Sintex Industries Limited on which TDS has been deducted under Section 194 C of the Income Tax Act, 1961. The value of taxable Services computed vide SCN dated 17.06.2020 is Rs. 2,50,16,535/- and in terms of Notification No. 30/2012-ST, dated 20.06.2012, Service Tax is payable under Reverse Charge Mechanism (RCM) @ 50% of the service tax amount by the appellant. Income from no other sources have been reported in the adjudication order. All these facts are undisputed.

10. The appellant have contended that the services provided by them stand exempted vide Sr. No. 25 (a) of Notification No. 25/2012-Service Tax, dated 20.06.2012, read with CBEC Circular No.199/09/2016-ST IF No.137/51/2016-ST dated 22.08.2016. The relevant portion of the notification reads as under:

Notification No. 25/2012-Service Tax New Delhi,



the 20 th June, 2012

G.S.R.....(E).- 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 Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

1. Services provided to the United Nations or a specified international organization;

...

25. Services provided to Government, a local authority or a governmental authority by way of—

(a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or

(b) repair or maintenance of a vessel or an aircraft;

...

It is observed that the Entry No. 25 (a) of the Mega Exemption Notification exempts activity carried out in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation.

10.1 The functions entrusted to Municipality under Article 243W of the Constitution of India (as listed in Para 7.3.2 of CBE&C's 'Taxation of Services: An Educational Guide' published on 20.06.2012 reads as :

Article 243W of the Constitution is as under:

'Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow—

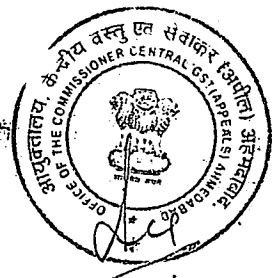
(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.'

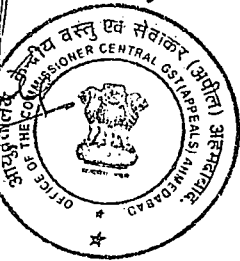
Matters listed in twelfth schedule are:



1. *Urban planning including town planning.*
2. *Regulation of land-use and construction of buildings.*
3. *Planning for economic and social development.*
4. *Roads and bridges.*
5. *Water supply for domestic, industrial and commercial purposes.*
6. *Public health, sanitation conservancy and solid waste management.*
7. *Fire services.*
8. *Urban forestry, protection of the environment and promotion of ecological aspects.*
9. *Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.*
10. *Slum improvement and upgradation.*
11. *Urban poverty alleviation.*
12. *Provision of urban amenities and facilities such as parks, gardens, playgrounds.*
13. *Promotion of cultural, educational and aesthetic aspects.*
14. *Burials and burial grounds; cremations, cremation grounds; and electric crematoriums.*
15. *Cattle pounds; prevention of cruelty to animals.*
16. *Vital statistics including registration of births and deaths.*
17. *Public amenities including street lighting, parking lots, bus stops and public conveniences.*
18. *Regulation of slaughter houses and tanneries.*

Upon going through the details of the nature and scope of services provided by the appellant as well as the definition of 'Functions entrusted to Municipality' under Article 243W of Constitution of India, I am of the considered view that the services provided by the appellant by way of 'Construction of Plinth flooring work, Electric work and erection of prefabricated structure' in relation to establishment of 'Sub Health Centres' under NHRM Project Rajasthan fall under the category of 'Public Health' and are, therefore, exempted from Service Tax under Sr. No.25 (a) of the Notification No. 25/2012-Service Tax, dated 20.06.2012.

11. I further find that this aspect of the nature of services rendered by the appellant and their claim for exemption under Sr. No. 25 (a) of the Mega Exemption Notification No. 25/2012 – ST dated 20.06.2012 was not considered by the adjudicating authority. In view of the above discussions, the demand of



Service Tax confirmed vide the impugned order is legally unsustainable and is liable to be set aside. As the demand of service tax fails to survive, the question of interest and penalty does not arise.

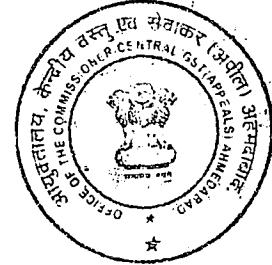
12. In view of the above, the impugned order passed by the adjudicating authority is set aside and the appeal filed by the appellants is allowed.

13. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।
The appeal filed by the appellant stands disposed of in above terms.

Akhil Kumar
24 January, 2023
(AKHILESH KUMAR)
Commissioner (Appeals)
Date: 24th January, 2023

Attested:

Somnath Chaudhary
(Somnath Chaudhary)
Superintendent (Appeals),
CGST, Ahmedabad.



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Commissionerate : Gandhinagar.
4. The Assistant Commissioner (System), CGST, Appeals, Ahmedabad. (for uploading the OIA)
5. Guard File.
6. P.A. File.

