


	केंद्रीय कर आयुक्त (अपील)	
सत्यमेव जयते	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX, केंद्रीय कर भवन सातवी मंजिल, पोलिटेक्निक के पास आम्बावाडी, अहमदाबाद-380015	7 th Floor, GST Building Near Polytechnic Ambavadi, Ahmedabad-380015
	079-26305065	टेलफेक्स : 079-26305136

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : V2(ST)64/Ahd-South/2018-19
Stay Appl.No. /2018-19

7734-7739

ख अपील आदेश संख्या Order-In-Appeal Nos. AHM-EXCUS-001-APP-113-2018-19
दिनांक Date : 14-09-2018 जारी करने की तारीख Date of Issue 28/12/2018

श्री उमा शंकर आयुक्त (अपील) द्वारा पारित

Passed by Shri. Uma Shanker, Commissioner (Appeals)

ग Arising out of Order-in-Original No. 06/CE-I/Ahmd/ADC/MK/2018 दिनांक: 28.03.2018 issued by
Addl. Commissioner, Div-Ahmd- South, Central Tax, Ahmedabad-South

घ अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
Trivedi Corporation Pvt. Ltd.
Ahmedabad

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथार्थिथि नीचे बताए गए सक्षम अधिकारी को
अपील या पुनरीक्षण आवेदन प्रस्तुत कर 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।

(i) 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 :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने 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 प्रकिया के
दौरान हुई हो।

(ii) 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.

(b) 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।



(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।

(b) 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।

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

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।

(d) 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.

(1) 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 भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष 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.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम 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.

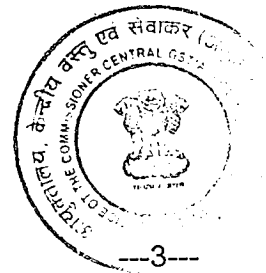
सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(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 :-

(क) उक्तलिखित परिच्छेद 2 (1) क 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 ओ-20, न्यू मैटल हॉस्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद-380016

(a) To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.



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 Appellate 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 मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर 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 ओर 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), के प्रति अपील के मामले में कर्तव्य मांग (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 सेवा कर के अंतर्गत, शामिल होगा "कर्तव्य की मांग"(Duty Demanded) -

- (i) (Section) खंड 11D के तहत निर्धारित राशि;
- (ii) लिया गलत सेनवैट क्रेडिट की राशि;
- (iii) 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।

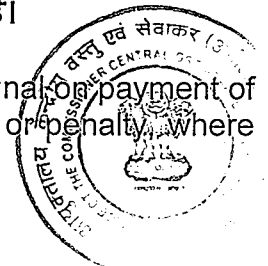
For an appeal to be filed before the CESTAT, 10% of the Duty & Penalty confirmed by the Appellate Commissioner would have to be pre-deposited, provided that the pre-deposit amount shall not exceed Rs.10 Crores. It may be noted that the pre-deposit is a mandatory condition for filing appeal before CESTAT. (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.

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."



levies of Central Excise duty and Service Tax for the same activity. They informed that in their previous case, the department demanded Central Excise duty for the same activity. Regarding the issue of renting of immovable property, the appellants stated that the amount being quite small, they are not seriously objecting the demand. They further argued that the work done by them for execution of construction and civil structures for Uttar Pradesh Rajkiya Nirman Nigam Ltd. (hereinafter referred to as "UPRNN"), in respect of supply and fixing the benefits of Notification number 25/2012-ST dated 20.06.2012 would be available which states that services offered 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.

5. A personal hearing in the matter was held on 07.09.2018 and Shri P. P. Jadeja, Authorised Representative and Shri Ajit Patel, Executive of the appellants, appeared for the same on behalf of the appellants. Shri Jadeja reiterated the contents of grounds of appeal and requested to set aside the impugned order. Regarding renting of immovable property, Shri Jadeja stated that the appellants want to contest only the imposition of penalty. Regarding the issue of job work, Shri Jadeja claimed that DGCEI previously demanded duty on manufacturing and the said issue is pending in the Tribunal. Regarding the issue of erection of statue, Shri Jadeja argued that the work was related to government. The work was not for commerce but for public use.

6. Going through the records submitted by the appellants, I find that there are three issues involved in the present case which I have listed below;

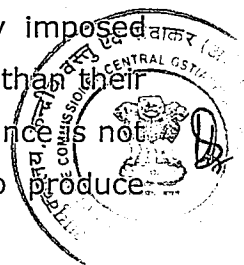
(i) The appellants have received rental income and the Service Tax demanded is ₹12,360/-.

(ii) The appellants have received job work income under Business Auxiliary Service and the Service Tax demanded is ₹23,16,949/-.

(iii) The appellants have done works for the execution of construction and civil structures for UPRNN and the Service Tax demanded is ₹1,06,93,677/-.

Now I will discuss all the above issues, point wise, in detail.

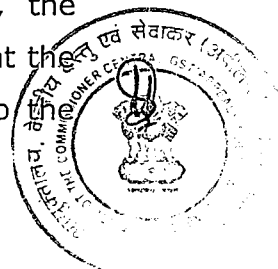
6.1. Regarding the first issue involving rental income, I find that the appellants have accepted the taxability of the said income. In paragraph 9 of the grounds of appeal, the appellants the appellants have pleaded that since there was no mala fide motive to evade Service Tax, the penalty imposed should be waived off. However, I could not find any evidence, other than their verbal contention, that their intention was honest. Mere verbal assurance is not sufficient evidence in the eyes of law. The appellants needed to produce



documentary evidence in support of their claim. In absence of any supporting evidence, I reject the argument filed by the appellants and consider that the adjudicating authority has very rightly demanded Service Tax amounting to ₹ 12,360/- along with interest and penalty.

6.2. Now comes the second issue pertaining to the demand of Service Tax under Business Auxiliary Service in job work income. The appellants have challenged the demand of Service Tax claiming that the department had already demanded Central Excise duty treating the activity as manufacture. In this regard, I find that the adjudicating authority did not deny the fact. In paragraph 12 of the impugned order, the adjudicating authority has accepted that under OIO number AHM/EXCUS/002/COMMR/023/2015-16 dated 31.05.2016, the Commissioner of Central Excise, Ahmedabad-II had held that the said job work activity amounts to manufacture. I have gone through the case booked by the DGCEI and decided by the Commissioner of Central Excise, Ahmedabad-II. I have seen the exhaustive discussion by the Commissioner of Central Excise, Ahmedabad-II, *supra*. DGCEI, being a superior investigative agency, has undertaken the investigation and they have weighed every aspect of the case whether the activities amount to manufacture or otherwise. I am in total agreement with the justification adduced in the O-I-O decided by the Commissioner of Central Excise, Ahmedabad-II, *supra* and will not like to deviate. Therefore, taking an uniform approach and considering the overwhelming merit of the case, this demand needs to be dropped.

6.3. The third issue is works done by the appellants for the execution of construction and civil structures for UPRNN and Service Tax demanded by the adjudicating authority under the category "Works Contract Service". In this regard, I find that the appellants had provided Works Contract Service to Uttar Pradesh Rajkiya Nirman Nigam Ltd. (UPRNNL) The appellants, in their grounds of appeal, stated that the issue pertained to execution of construction and civil structures for UPRNN in respect of supply and fixing Choumukhi Bhagvan Budhha Statue at Boudh Vihar Shanti Upavan, Lucknow, supply and fixing of granite stone works on central column at Column Plaza, Noida and supply and fixing of chomukhi statues of Manyavar Kanshiramji at Boudh Vihar Shanti Upavan, Lucknow. The appellants argued that the works done by them for execution of construction and civil structures for UPRNN in respect of supply and fixing the benefits of Notification number 25/2012-ST dated 20.06.2012 will be available to them which states that services offered 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. In paragraph 14.3 of the impugned order, the adjudicating authority counters the argument of the appellants stating that the latter has failed to establish that the services provided by them was to



government authority and it was predominantly for use other than for commerce, industry or any other business. I reproduce below, the observation of the adjudicating authority, verbatim;

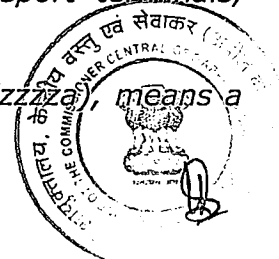
"..... In the present case, the work done by the noticee for execution of construction and civil structures for UPRNN, (Utter Pradesh Rajkiya Nirman Nigam Ltd.), Lucknow, the benefit of Notification No. 25/2012-S.T., dated 20-6-2012 [Sr. No. 12] will be available which provides for exemption to the services 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 civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession. I find that first of all the noticee failed to establish that the services provided by them was to the "Government Authority" and secondly "it was predominantly for use other than for commerce, industry, or any other business."

The adjudicating authority claimed that the appellants should have produced documentary evidence such as constitution of UPRNNL i.e. Nigam, the law by which it came into existence, the law and by-laws of the Nigam, the scope of activities to be undertaken by the Nigam, the nature of its character and purpose to be achieved by the Nigam, the financial aid and income of the Nigam and so on. I find that UPRNN is a state government undertaking which has been incorporated in the month of August 1975 as a U.P. State Government undertaking. For fulfillment of its objectives, Nirman Nigam started its operations in 1975 with a share capital of ₹5 lakhs. In 1977-78, Government provided it a share capital of ₹100 lakhs out of which Nigam refunded ₹75 lakhs as a part of profit to the government. They execute the construction work, awarded by Government, semi Government and other Undertakings in form of deposit works; through tender participation. All the above information is available in their website and it is very clear that the Nigam is a government undertaking. It is quite surprising that the adjudicating authority has failed to reason this fact.

Further, for more clarification, I would like to go through the definition of Works Contract Service provided under Section 65(105)(zzzza) of the Finance Act, 1994, as below;

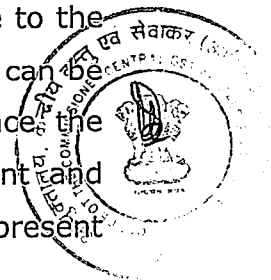
"Any service provided or to be provided to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

"Works contract", for the purposes of section 65(105)(zzzza), means a contract wherein,-



- (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and
- (ii) such contract is for the purposes of carrying out,—
- (a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or
- (b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or
- (c) construction of a new residential complex or a part thereof; or
- (d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or
- (e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;”

From paragraph 10 and 11 of the show cause notice, it is not clear whether it wants to classify the works of the appellants under sub-paras (a), (b), (c), (d) or (e) of Section 65(105)(zzzza). Even the impugned order, in paragraph 14, does not specify which portion of Works contract is applicable. In view of the vagueness and non-specific allegation, I would like to examine the issue in detail. Sub-paras (c) and (e) of Section 65(105)(zzzza) are outright not applicable in view of the nature of works under impugned show cause notice. Now, looking to the above, if the adjudicating authority considers the services of the appellants in sub-para (a), then according to the rule of 'noscitur a sociis', as explained by Lord Macmillan, "The meaning of a word is to be judged by the company it keeps". Thus, erection, commissioning or installation of structures has to be read as erection, commissioning or installation of plant, machinery and equipment as the word 'structure' takes the colour of plant, machinery and equipment. This has been very logically explained by Justice Gajendra Gadkar, in the following words; "This rule, according to Maxwell, means that when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take as it were their colour from each other.....". Associated words take their meaning from one another under the doctrine of noscitur a sociis, the philosophy of which is that the meaning of the doubtful word may be ascertained by reference to the meaning of words associated with it. Therefore, looking at the above, it can be very well deduced that the adjudicating authority cannot legally place the services of the appellants along with plant, machinery and equipment and structures thereof and therefore sub-para (a) is not applicable in the present case.



So, if it is presumed that the adjudicating authority has placed the case in sub-para (b) above, then it can be seen that the said sub-para deals with construction primarily for the purpose of commerce or industry. As the appellants and UPRNN were involved in constructions pertaining to government works, sub-para (b) will also not be applicable to the present case.

Now, even for academic intent, let me examine applicability of construction services pertaining to commercial, industrial and civil structures. I would like to reproduce below, the relevant portion of the Circular number 80/10/04-ST dated 17.09.2004 for more clarity;

"13. Construction services (commercial and industrial buildings or civil structures)

13.1 Services provided by a commercial concern in relation to construction, repairs, alteration or restoration of such buildings, civil structures or parts thereof which are used, occupied or engaged for the purposes of commerce and industry are covered under this new levy. In this case the service is essentially provided to a person who gets such constructions etc. done, by a building or civil contractor. Estate builders who construct buildings/ civil structures for themselves (for their own use, renting it out or for selling it subsequently) are not taxable service providers. However, if such real estate owners hire contractor/ contractors, the payment made to such contractor would be subjected to service tax under this head. The tax is limited only in case the service is provided by a commercial concern. Thus service provided by a laborer engaged directly by the property owner or a contractor who does not have a business establishment would not be subject to service tax.

13.2 The leviability of service tax would depend primarily upon whether the building or civil structure is "used, or to be used" for commerce or industry. The information about this has to be gathered from the approved plan of the building or civil construction. Such constructions which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purposes of profit are not taxable, being non-commercial in nature. Generally, government buildings or civil constructions are used for residential, office purposes or for providing civic amenities. Thus, normally government constructions would not be taxable. However, if such constructions are for commercial purposes like local government bodies getting shops constructed for letting them out, such activity would be commercial and builders would be subjected to Service Tax."

Thus, as explained above, in paragraph 13.1 of the Circular number 80/10/04-ST dated 17.09.2004, to verify the taxability of a service, the usage of such



service is to be seen. If such construction service is used for commercial or industrial purpose by the service recipient, then only such construction services/ activities would be liable for Service Tax. Paragraph 13.2 of the said circular categorically clarifies the scope of applicability of Service Tax with regard to the said service. Constructions which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purposes of profit are not taxable, being non-commercial in nature.

6.4. Thus, I find that, the construction in question carried out by the appellants, is for an organization (UPRNN) which is an undertaking of the Uttar Pradesh government and the work undertaken by the former pertained to execution of construction and civil structures for UPRNN in respect of supply and fixing Choumukhi Bhagvan Budhha Statue at Boudh Vihar Shanti Upavan, Lucknow, supply and fixing of granite stone works on central column at Column Plaza, Noida and supply and fixing of chomukhi statues of Manyavar Kanshiramji at Boudh Vihar Shanti Upavan, Lucknow. It is very much clear that the above construction cannot be considered to be commercial construction activity as per the above circular. Thus, I conclude that the appellants are not liable for payment of Service Tax under the category of Works Contract Service being construction pertaining to public utility.

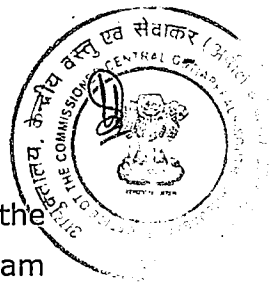
In the case of *B. B. Nirman Sahakari Samiti vs. State of Rajasthan* (AIR 1979 Raj. 209), a question arose as to what is a Public Utility! The Hon'ble High Court held that public utility means any work/project which is going to be useful to the members of the public at large. The public benefit aimed at or intended to be secured, need not be to the whole community but to a considerable number of people.

In American Law, the word 'Public Facility' has been defined as under;

'Public Facility' means the following facilities owned by a state or a local government, such as;

- (a) *Any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development or airport facility.*
- (b) *Any other Federal and street road or highway.*
- (c) **Any other public building, structure or system including those used for educational recreational or cultural purpose.**
- (d) *Any park.*

Thus, from the above, it is quite clear that the appellants were involved in the construction of civil structures for UPRNN (Uttar Pradesh Rajkiya Nirman Nigam Ltd.) which is an undertaking of the Uttar Pradesh government. The construction was in respect of supply and fixing Choumukhi Bhagvan Budhha Statue at Boudh Vihar Shanti Upavan, Lucknow, supply and fixing of granite



stone works on central column at Column Plaza, Noida and supply and fixing of chomukhi statues of Manyavar Kanshiramji at Boudh Vihar Shanti Upavan, Lucknow. The said activity, as can be clearly seen, is a non-profit one by nature (being public utility project) and hence, department cannot demand Service Tax from the appellants.

6.5. Further, in paragraph 12, I find that the adjudicating authority accepted the fact that the Commissioner of Central Excise, Ahmedabad-II, vide OIO number AHM/EXCUS/002/COMMR/023/2015-16 dated 31.05.2016, had held that the so called same job work activity, carried out by M/s. DPM Design, amounts to manufacture. However, the adjudicating authority stated that as the said OIO had been challenged and an appeal has been filed with the CESTAT, Service Tax is chargeable on the said activity. The adjudicating authority can not deviate from the view of the department as he is also part of the same department. This shows a prejudiced mindset on the part of the department towards the trade. Adjudicating authority cannot demand Service Tax on the activity on which Central Excise duty has already been demanded. This leads to double taxation giving rise to unjust burden on the trade.

Hence, in view of the discussion held above, I consider that the demand of ₹ 1,06,93,677/- is not justified on the part of the adjudicating authority.

7. The appeal is partly allowed as per the discussion held in paragraphs 6.1, 6.2, 6.3, 6.4 and 6.5 above.

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

8. The appeals filed by the appellant stand disposed off in above terms.

उमा शंकर
(उमा शंकर)

CENTRAL TAX (Appeals),

AHMEDABAD.

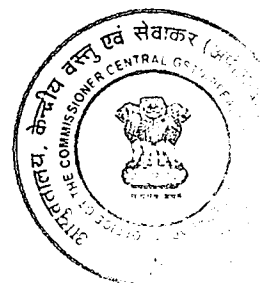
ATTESTED

S. DUTTA
(S. DUTTA)

SUPERINTENDENT,

CENTRAL TAX (APPEALS),

AHMEDABAD.



To,
M/s. Trivedi Corporation Pvt. Ltd.,
68, Premanjali Society, Bodakdev,
Ahmedabad-380 015.

Copy to:-

1. The Chief Commissioner, Central Tax Zone, Ahmedabad.
2. The Commissioner, Central Tax, Ahmedabad-South.
3. The Dy. / Asstt. Commissioner, Central Tax, Div-VI, Ahmedabad-South.
4. The Addl. Commissioner, Central Tax, Ahmedabad-South.
5. The Asstt. Commissioner, Central Tax (System), HQ, Ahmedabad-South
6. Guard file.
7. P.A file.