

आयुक्त (अपील - II) का कार्यालय केन्द्रीय उत्पाद शुल्क  
सैन्टल एक्साइज भवन, सातवीं मंजिल, पौलिटैक्नीक के पास,  
आंबावाडी, अहमदाबाद— 380015.

क फाइल संख्या : File No : V2(ST)07&58/A-II/2016-17

ख अपील आदेश संख्या : Order-In-Appeal No.. AHM-SVTAX-000-APP-222-223-16-17

दिनांक Date : 20.01.2017 जारी करने की तारीख Date of Issue

श्री उमा शंकर, आयुक्त (अपील-II) द्वारा पारित

Passed by Shri Uma Shanker Commissioner (Appeals-II)

ग \_\_\_\_\_ आयुक्त सेवाकर अहमदाबाद : आयुक्तालय द्वारा जारी मूल आदेश सं \_\_\_\_\_

\_\_\_\_\_ दिनांक : \_\_\_\_\_ से सृजित

Arising out of Order-in-Original No AHM-SVTax-000-ADC-014-15-16 Dated 09.02.2016 &AHM-SVTax-000-ADC-015-15-16 dated 09.02.2016 Issued

by ADC STC, Service Tax, Ahmedabad

ध अपीलकर्ता का नाम एवं पता Name & Address of The Appellants  
M/s. J V Buildcon Ahmedabad

इस अपील आदेश से असंतुष्ट कोई भी व्यक्ति उचित प्राधिकारी को अपील निम्नलिखित प्रकार से कर सकता है:-

Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way :-

सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण को अपील:-  
Appeal To Customs Central Excise And Service Tax Appellate Tribunal :-

वित्तीय अधिनियम, 1994 की धारा 86 के अंतर्गत अपील को निम्न के पास की जा सकती:-  
Under Section 86 of the Finance Act 1994 an appeal lies to :-

पश्चिम क्षेत्रीय पीठ सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण ओ. 20, न्यू मैन्टल हास्पिटल कम्पाउण्ड, मेधाणी नगर, अहमदाबाद-380016

The West Regional Bench of Customs, Excise, Service Tax Appellate Tribunal (CESTAT) at O-20, New Mental Hospital Compound, Meghani Nagar, Ahmedabad - 380 016.

(ii) अपीलीय न्यायाधिकरण को वित्तीय अधिनियम, 1994 की धारा 86 (1) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (1) के अंतर्गत निर्धारित फार्म एस.टी- 5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गई हो उसकी प्रतियाँ भेजी जानी चाहिए (उनमें से एक प्रमाणित प्रति होगी) और साथ में जिस स्थान में न्यायाधिकरण का न्यायपीठ स्थित है, वहाँ के नामित सार्वजनिक क्षेत्र बैंक के न्यायपीठ के सहायक रजिस्ट्रार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ सेवाकर की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी।

(ii) 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 accompany ed 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.

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(iii) वित्तीय अधिनियम, 1994 की धारा 86 की उप-धाराओं एवं (2ए) के अंतर्गत अपील सेवाकर नियमावली, 1994 के नियम 9 (2ए) के अंतर्गत निर्धारित फार्म एस.टी.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क (अपील) के आदेश की प्रतियाँ (OIA) (उसमें से प्रमाणित प्रति होगी) और अपर आयुक्त, सहायक / उप आयुक्त अथवा A219K केन्द्रीय उत्पाद शुल्क, अपीलीय न्यायाधिकरण को आवेदन करने के निदेश देते हुए आदेश (OIO) की प्रति भेजनी होगी।

(iii) The appeal under sub section (2A) of the section 86 the Finance Act 1994, shall be filed in Form ST-7 as prescribed under Rule 9 (2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise (Appeals)(OIA)(one of which shall be a certified copy) and copy of the order passed by the Addl. / Joint or Dy. /Asstt. Commissioner or Superintendent of Central Excise & Service Tax (OIO) to apply to the Appellate Tribunal.

2. यथासंशोधित न्यायालय शुल्क अधिनियम, 1975 की शर्तों पर अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार मूल आदेश एवं स्थगन प्राधिकारी के आदेश की प्रति पर रु 6.50/- पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

2. One copy of application or O.I.O. as the case may be, and the order of the adjudication authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under Schedule-I in terms of the Court Fee Act, 1975, as amended.

3. सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्यविधि) नियमावली, 1982 में चर्चित एवं अन्य संबंधित मामलों को सम्मिलित करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है।

3. 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.

4. सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 34फ के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 29) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1984 की धारा 23 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल हैं -

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

⇒ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्ज़ों एवं अपील को लागू नहीं होगा।

4. For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, 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 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,

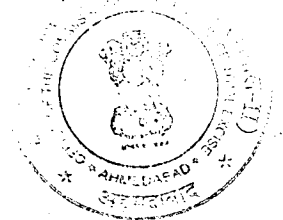
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (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.

4(1) इस संदर्भ में, 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।

4(1) 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.



### ORDER IN APPEAL

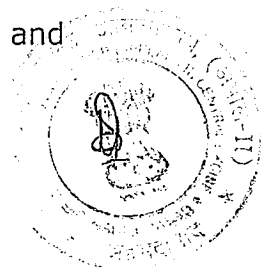
M/s. J. V. Buildcon, 46, Paeshwanathnagar society, Opp. Rajkot Nagarik Co-operative Bank, Naranpura char rasta, Naranpura , Ahmedabad-380 012. (*hereinafter referred to as 'appellants'*) holding ST registration No. AAGF J4988C SD001 under WC/construction service, have filed the present appeals on 11.04.2016 against the Order-in-Original number AHM-SVTAX-000-ADC-014-15 dated 09.02.2016 (*hereinafter referred to as 'impugned order'*) passed by the Addl. Commissioner, Service Tax, HQ, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

Another appeal is filed on 17.05.2016 against the subsequent period Order-in-Original number AHM-SVTAX-000-ADC-014-15 dated 09.02.2016 (*hereinafter referred to as 'impugned order'*) passed by the Addl. Commissioner, Service Tax, HQ, Ahmedabad (*hereinafter referred to as 'adjudicating authority'*);

2. The facts of the case, in brief, are that the Ahmedabad Municipal Corporation (AMC in Short) has given works contract to M/s Nila Infrastructure Ltd. (NILA in short) for construction of Bus Shelters for BRTS constructed under Jawaharlal Nehru National Urban Renewal Mission- JNNRUM. NILA has given sub-contract to appellant. Adjudicating authority has concluded that sub-contractor service are in nature of input service to main contractor so service tax is leviable on services of sub-contractor in terms of CBEC circular No. 96/7/2007-ST dated 23.08.2007. Benefit of serial No. 13(a) of notification No. 25/2012-ST is not admissible in view of para 7.11.11 of Service Tax Educational Guide issued by board. Appellant could not furnish the exemption certificate issued by AMC.

2.1 In respect of impugned OIO of first appeal Adjudicating authority has confirmed the demand of Rs. 37,49,212/- for period Oct-2012 to Sept-2013, under section 73(2) with interest under section 75. Also imposed penalty of Rs. 3,74,921/- under section 76 and penalty of Rs. 20,000/- under section 77(2).

2.2 In respect of impugned OIO of second appeal Adjudicating authority has confirmed the demand of Rs. 26,74,745/- for immediate subsequent period Oct-2013 to Sept-2014, under section 73(2) with interest under section 75. Also imposed penalty of Rs. 2,67,475/- under section 76 and penalty of Rs. 20,000/- under section 77(2).



3. Being aggrieved with the impugned order, the appellants preferred an appeal on 11.04.2016 and 17.05.2016 before the Commissioner (Appeals-II) wherein it is contended that-

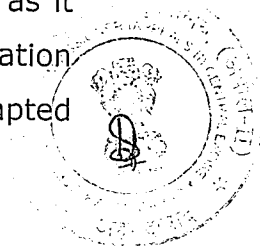
- I. Work pertaining to JNNURM is specifically exempted under sr. No. 13(b) of Notification 25/2012 w.e.f. 01.07.2012.
- II. There is no requirement in exemption notification that service receiver should issue certificate to service provider.
- III. Terminal of road transport for use by general public is exempted by sr. No. 13(a) of Notification 25/2012 ST
- IV. AMC being local authority appellant is eligible for exemption under sr. No. 12(a) of Notification 25/2012-ST.
- V. Service rendered by sub contractor to main contractor providing works contract service is exempted as per sr. No. 29(h) of Notification No. 25/2012-ST read with last sub-para 7.11.11 of Educational Guide issued under circular dated 20.06.2012.
- VI. Adjudicating authority has cited the judgment and CBEC circular dated 24.05.2010 which is not relevant in view of introduction of negative regime w.e.f. 01.07.2012.

4. Personal hearing in the case was granted on 21.12.2016 and Shri Tarang Kothari, CA, and Shri Bishan Shah, CA appeared before me. They reiterated the grounds of appeal and stated that JNNURM is exempted under Noti. No. 25/2012 at entry 29(h).

#### DISUSSION AND FINDINGS

5. I have carefully gone through the facts of the case on records, grounds of appeal in the Appeal Memorandum and oral submissions made by the appellants at the time of personal hearing. Sort question to be decided is as to whether or not the works contract service rendered by sub-contractor to main contractor is liable for service tax in case the said works contract service is exempted to main contractor.

6. I find that works contract of JNNURM is given by AMC to M/s Nila Infrastructure Ltd and said work is exempted vide Sr. No 13(b) of Notification No. 25/2012-ST as it being JNNURM work. Moreover said works contract is exempted vide Sr. No 13(a) of Notification No. 25/2012-ST as it is a government work and work is bus terminal for road transportation meant to be used by general public. M/s Nila Infrastructure Ltd is exempted



from payment of service tax as per Sr. No 13(a) and Sr. No 13(b) of Notification No. 25/2012-ST and it is not disputed in present case. What is disputed is service rendered by appellant to M/s Nila Infrastructure Ltd. Service rendered by appellant is works contract service to M/s Nila Infrastructure and it is not disputed either.

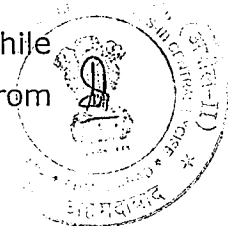
7. CBEC circular No. 96/7/2007-ST dated 23.08.2007 which is relied upon by adjudicating authority in confirming the duty is not relevant in negative list regime introduced w.e.f. 01.07.2012. Earlier the board in its circular no. 138/07/2011-ST, dated 06.05.2011 clarified that when a principal contractor while providing works contract services obtained the service of various other service providers, such as architect, consulting engineer etc. These are separately classifiable services. Therefore, while the principal contractor would not be liable to pay service tax on the construction of roads, dams, etc. but the consulting engineer, architect etc. who are providing services of design, drawing, engineering etc. for the construction of such road would be liable to pay service tax as their services are separately classifiable and will not be covered under the works contract service. In instance case service rendered by appellant is not separately classifiable hence it is not taxable.

8. However Sr. No 29(h) of Notification No. 25/2012-ST w.e.f. 20.06.2012 exempted such sub-contractor rendering works contract service to main contractor who are exempted to pay service tax on such works contract service. Clause (h) above exempts sub-contractor of exempt works contract service only if such sub-contractor is also providing services in the nature of works contract services which is exempted. I find that the original contractor is exempted under Notification No. 25/2012-ST vide clause 13(a) and 13(b).

9. Last Para of point No. 7.11.11 of educational guide makes it clear that such works contract service rendered by sub-contractor is exempted. Point No. 7.11.11 is reproduced as below-

*"However, a sub-contractor providing services by way of works contract to the main contractor providing exempt works contract services, has been exempted from Service Tax under the mega exemption if the main contractor is providing exempt services of works contracts. It may be noted that the exemption is available to sub-contractors engaged in works contracts and not to other out sourced services such as architect or consultants."*

point No. 7.11.11 of educational guide also makes it clear that that while executing a works contract, the main contractor takes the services from



architects, consulting engineers, erection, commissioning or installation agents etc., in such case the services rendered by such person would not be exempt from service tax even though such services are rendered in relation to exempt works contract service.

10. In view of foregoing discussion I hold that the works contract service rendered by appellant is exempted under Sr. No 29(h) of Notification No. 25/2012-ST. When duty itself is not recoverable, no penalty can be imposed on appellant.

11. In view of above I set aside the both impugned OIO`s and appeals filed by the appellant are allowed.

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

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



(उमा शंकर)

आयुक्त (अपील्स - II)

ATTESTED



(R.R. PATEL)

SUPERINTENDENT (APPEAL-II),  
CENTRAL EXCISE, AHMEDABAD.

To,

M/s. J. V. Buildcon,

46, Paeshwanathnagar society,

Opp. Rajkot Nagarik Co-operative Bank,

Naranpura char rasta, Naranpura ,

Ahmedabad- 380 012.

**Copy to:**

- 1) The Chief Commissioner, Central Excise, Ahmedabad.
- 2) The Commissioner, Service Tax ,Ahmedabad-.
- 3) The Additional Commissioner, Service Tax, Ahmedabad
- 4) The Asst. Commissioner,
- 5) The Asst. Commissioner(System), C.Ex. Hq, Ahmedabad.
- 6) Guard File.
- 7) P.A. File.

