केंद्रीय कर आयुक्त (अपील)
O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,
केंद्रीय उत्पाद शुल्क भवन, सातवाँ मंजिल,पोलिटेक्निक के पास,
आम्बावाडी, अहमदाबाद-380015
7th Floor, Central Excise Building,
Near Polytechnic,
Ambavadi, Ahmedabad-380015
☎ : 079-26305065
टेलेफैक्स : 079 - 26305136

क फाइल संख्या : File No : **V2(WCS)15/ST-4/STC-III/2016-17**

ख अपील आदेश संख्या :Order-In-Appeal No.: **AHM-EXCUS-003-APP-85-17-18**

दिनाँक Date :**30.08.2017** जारी करने की तारीख Date of Issue

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals)Ahmedabad

ग _____ आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश सं _____ दिनाँक : 20/9/17 से सृजित

Arising out of Order-in-Original: **AHM-STX-003-ADC-AJS-008-16-17,** Date: **08.08.2016** Issued by: Additional Commissioner, Central Excise, Din:Gandhinagar, G'nagar-III.

ध **अपीलकर्ता** एवं प्रतिवादी का नाम एवं पता

Name & Address of the **Appellant** & Respondent

M/s. Bhavani Co.

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति 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 अंतर्गत नीचे बताए गए मामलों के बारे में पूवोक्त धारा को उप–धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर 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 प्रक्रिया 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.

(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 मामलें 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.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो डयूटी केडिट 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 दिनाँक 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 रूपये या उससे कम हो तो रूपये 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 अपीलः–
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35– ण्0बी/35–इ के अंतर्गतः–

Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

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 मैन्टल हास्पिटल कम्पाउण्ड, मेघाणी नगर, अहमदाबाद–380016.

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.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए–3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणें की गई अपील के विरूद्व अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहां रूपए 1000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/– फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग ओर लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहां रूपए 10000/– फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखाकिंत बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

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. Registar 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 ओदश 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 हैं।

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 not withstanding 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 अनुसूचि–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 beer a court fee stamp of Rs.6.50 paisa 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 in 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 उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्तेत) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, १९४४ की धारा ३५फ के अंतर्गत वित्तीय(संख्या-२) अधिनियम २०१४(२०१४ की संख्या २५) दिनांक: ०६.०८.२०१४ जो की वित्तीय अधिनियम, १९९४ की धारा ८३ 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 रूपए से अधिक न हो
केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

(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 अर्ज़ी एवं अपील को लागू नहीं होगे।

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.

(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।

(6)(i) 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

This appeal is filed by the Assistant Commissioner, Service Tax Division, Gandhinagar of the erstwhile Ahmedabad-III Commissionerate, [in short – 'appellant'] against OIO No. AHM-STX-003-ADC-AJS-008-16-17 dated 8.8.2015 in terms of Review Order No. 2/2016-17 dated 4.11.2016 issued by the Commissioner, Central Excise, Ahmedabad-III. The respondent in the present case is M/s. Bhavani Construction Company, 5, Patidarnagar, Vibhag 2, Opposite Luv Kush Bungalows, Dobhighat Road, Mehsana.

2. A show cause notice dated 21.4.2015, was issued to the respondent, *inter alia* alleging that they had received work orders from Kadi Taluka Panchayat Work for construction of proposed hall and from Kadi Nagarseva Sadan for undertaking the electrical, civil, fire fighting and construction work of town hall; that the hall was to be used for commercial purpose; that it would be given to persons/organizations on rent, for organizing functions. The notice further alleged that the said services provided by the respondent in relation to construction of a civil structure or any other original works were meant to be used for commercial purpose and no exemption from payment of service tax under the category of 'works contract service' was available under Sr. No. 12(a) of notification No. 25/2012-ST dated 20.6.2012. The notice therefore, demanded service tax along with interest and further proposed penalties on the respondent.

3. The aforementioned notice was adjudicated vide the impugned OIO dated 8.8.2016, wherein the adjudicating authority vacated the proceedings initiated under the notice dated 21.4.2015. The impugned OIO was reviewed by the Commissioner, Central Excise, Ahmedabad-III and an appeal has been filed by the appellant in terms of Review order No. 2/2016-17 dated 4.11.2016, raising the following grounds:

- that only if a Government department(sovereign)/public authorities perform any mandatory or statutory function under the provisions of any law and collect fees such activity shall be treated as activity purely in public interest and will not be taxable;
- the adjudicating authority did not dwell on the claim of the respondent that the amount charged was a token amount to be used for the purpose of maintenance of hall and not for earning profit; that the respondent failed to submit any proof justifying their claim that the amount so charged is only for maintenance; that the amount charged by municipalities was not specified;
- the respondent has not submitted any proof of approved plan of the building or civil construction to prove that these were for use of organization or institution being established solely for educational, religious charitable health sanitation or philanthropic purposes or non commercial in nature and not for the purpose of profit;
- the adjudicating authority merely relying on the letter issued by Kadi Nagar Seva Sadan, Municipal office has drawn a conclusion that the structure erected by the respondent has been used for the welfare of the citizen;
- the finding that the structure was used for non commercial purpose is based on presumption;
- that 'commercial' means any activity which is carried out for a consideration and the presence or absence of any profit motive either of service provider or service recipient it is not relevant;
- that the service of construction work of Town Hall and electrical, civil, fire fighting and construction work of town hall provided by the respondent to M/s. Kadi Taluka Panchayat and Kadi Nagarseva Sadan was nothing but the service of furtherance of business and industry to earn profit by M/s. Bhavan Construction;
- that they would like to rely on the case of Gadkari Ranmgayatan [2014(36) STR 15].

4. Personal hearing was held on 17.8.2017, wherein Shri Bishan Shah, CA, appeared for the respondents. He further relied on OIA No. 196/2013 dated 6.6.2013 and also submitted cross objections, raising the following points:

- that they had constructed town hall for Kadi Taluka Panchayat and works pertaining to electrical, civil, etc. of the town hall for Kadi Nagarseva Sadan;
- that the town hall are for providing amenities in public interest and for which if some nominal amount for its maintenance is being charged that does not constitute an activity enough to be related to commerce or industry;
- that they would like to rely on the case of B G Shirke Construction [2014(33) STR 77], OIA dated 6.6.2013 in the case of Balar Buildcon Private Limited:
- the activity carried out included both material portion [cost of material]during execution of the contract and service portion [execution construction work charges]; that the activity carried out by the appellant clearly falls under the definition of works contract;
- that as per the provision of Rule 2A of Service Tax Determination of Value Rules, 2006, in case of works contract, service tax is payable on 40% of the total amount charged for the works contract;
- that the gross amount received by the respondent may be considered as cum tax:
- that they are not liable for interest or penalty.

5. I have gone through the facts of the case, the Review order, the cross objection and the oral submissions by the respondent made during the course of personal hearing.

6. The issue to be decided is whether the respondent is liable for service tax of Rs. 42,68,161/- leviable on 'Works Contract Services' provided during the period from 1.7.2012 to 31.3.2014, in respect of services provided to Kadi Taluka Panchayat Work and Kadi Nagarseva Sadan.

7. The adjudicating authority has set aside the demand on the following grounds:

- three fold condition is required to be satisfied for the purpose of extending the benefit of exemption under the notification no. 25/2015-ST viz [a]the service should have been rendered to Government, local authority or a government authority; [b]it should be in relation to construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration and c] it should be in relation to structure specified in clauses [a] to [f] of the notification, supra;
- that Taluka panchayat and Nagar Seva Sadan are local authorities;
- that the town hall is for the purpose of holding cultural programmes; that vide letter dated 29.5.2015, the Kadi Nagarseva Sadan, clarified that the town hall under consideration is to be used for the purpose of citizens welfare, cultural programme as a public utility;
- that the structure is also meant predominantly for use other than for commerce, industry or any other business or profession;
- that the show cause notice merely makes a one line allegation that the town hall are used for commercial purpose without adducing any evidence.

8. Facts not disputed are that the respondent under took the work of construction of Town hall based on the work order of M/s. Kadi Taluka Panchayat and Kadi Nagarseva Sadan. The other undisputed fact is that both the Taluka Panchayat and the Nagarseva Sadan, fall within the ambit of 'local authority' as required under Sr. No. 12(a) of notification No. 25/2012-ST dated 20.6.2012. There is also no dispute as far as [a] the service having been provided to a local authority and [b] that the service was in relation to construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration, is concerned.

9. While the impugned OIO dated 8.8.2016 holds that the respondent is eligible for exemption under notification No. 25/2012-ST, the appellant [in this case the department], has challenged this finding on the grounds mentioned in para 3, supra.

10. The bone of contention as is evident is whether the respondent is eligible for benefit of notification No. 25/2012-ST or not. Its relevant extracts are as follows :

Exemptions from Service tax — Mega Notifications — Notificat on No. 12/2012-S.T. superseded

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 :-

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) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
(d) canal, dam or other irrigation works;
(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 section 65B of the said Act;

Since the dispute is in relation to construction of town hall, the question of the service falling under 12(b), (d), (e) and (f) does not arise. However, what needs to be examined is whether it is covered under 12(a) or (c).

10.1 The exemption is in respect of 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. Kadi Nagarseva Sadan, is a local authority [see para 8 above], has in its letter dated 29.5.2015 stated that the town hall is to be used for the purpose of citizen's welfare, cultural programmes and as a public utility, which means that the said hall would be used for matters other than for commerce, industry, or any other business or profession. *Commerce*, a term which is often used interchangeably with trade, means the exchange of goods, products, or any type of personal property. *Industry* means one that employs a large personnel and capital especially in manufacturing and *business and profession* means engagement in commercial or mercantile activity as a means of livelihood. Hence, by no stretch of imagination can construction of town hall by a Taluka panchayat and Nagarseva Sadan, be termed as having been made/used for matters of

commerce, industry, or any other business or profession i.e. for commercial purpose. This is more so, when it is emphatically stated by the Nagarseva Sadan that the town hall is to be used for the purpose of citizen's welfare, cultural programmes and as a public utility. I find that the show cause notice does not provide any proof to substantiate Revenue's claim that construction work of town hall by the respondent for M/s. Kadi Taluka Panchayat and Kadi Nagarseva Sadan was nothing but the service for the furtherance of business and industry to earn profit by M/s. Bhavani Construction. Hence, I feel that it is covered under (a) supra. Thus, I find that there is nothing on record, to show that the appellant was not eligible for the benefit of notification No. 25/2012-ST.

11. I would now like to deal with the Revenue's contention raised in the Review Order, against the setting aside of the notice by the adjudicating authority. The ground that that only if a Government department(sovereign)/public authorities performs any mandatory or statutory function under the provisions of any law and collect fees such activity shall be treated as activity purely in public interest and will not be taxable, is not a correct interpretation of notification No. 25/2012-ST. Nowhere does the exemption notification state so. Hence, this contention stands rejected. The second contention that the adjudicating authority did not dwell on the claim of the respondent that the amount charged was a token amount to be used for the purpose of maintenance of hall and not for earning profit and that the respondent failed to submit any proof justifying their claim that the amount so charged is only for maintenance. The contention is legally untenable since it was the department which had to corroborate the allegation made with substantial evidence to back the allegation. The adjudicating authority cannot go beyond the scope of the notice. Further, the ground that the respondent has not submitted any proof of approved plan of the building or civil construction to prove that these were for use of organization or institution being established solely for educational, religious charitable health sanitation or philanthropic purposes or non commercial in nature and not for the purpose of profit, is not correct since it is not for the person against whom charges are levelled who is required to submit proof but the person making allegation who has to substantiate his case with proper primary and corroborative evidence. I find that their is no such evidence in this case. The departments allegation is purely based on assumptions and presumptions. There is no evidence to back the charge that the construction work of town hall were provided by the respondent to M/s. Kadi Taluka Panchayat and Kadi Nagarseva Sadan was nothing but the service of furtherance of business and industry to earn profit by M/s. Bhavan Construction. The Hon'ble Supreme Court in the case of Avadh Sugar Mills [1978 ELT J 172] has categorically held that the findings in the absence of any tangible evidence and based on unwarranted assumptions is vitiated by an error of law. It is precisely because of this that I am inclined to uphold the order of the adjudicating authority, since he had nothing on record, which could back the allegations of revenue.

12. Revenue in the review order has relied upon the case of Gadkari Ranmgayatan [2014(36) STR 15], especially para 4.2 of the order. I find that the reliance on the said case is not tenable on facts. The present dispute, as already stated, covers the period from 1.7.2012 to

31.3.2014. The year 2012, brought in major changes on the service tax front with the advent of negative list and changes in the definition of *works contract*. The case law cited, however, covers the period from 1998-99 to 2004-05. When the law was not the same, the reliance becomes untenable.

13. The respondent I find has relied on the case of B G Shirke Construction Technology Private Limited [2014(33) STR 77]

> **6.1** The question involved herein is whether the Sports Complex Stadium constructed for the purpose of holding games can be considered as a commercial or industrial construction, merely on the ground that the stadium is allowed to be used by the public and others later on, on payment of user charges. In our view, the Sports Stadia is a public facility for the recreation of the public and it does not come under the category of commercial or industrial construction.
>
> **6.2** In the case of *B.B. Nirman Sahakari Samiti* v. *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 aided 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 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 purposes.*
> (d) Any park."
>
> **6.3** The Sports Stadia is used for public purpose. Merely because some amount is charged for using the facility, it cannot become a commercial or industrial construction. Even in a Children's Park, entry fee may be levied for maintenance of the Park. Merely because some amount is charged for using the Park, it cannot be said that it is a commercial or industrial construction. Adopting the same logic, the Sports Stadia in the present case is also a non-commercial construction for use by the public. Therefore, we are of the considered view that the Sports Stadium constructed for conducting Commonwealth Games, is a non-commercial construction.
>
> **7.** In view of the foregoing, who hold that Shiv Chhatrapati Sports Complex constructed by the appellant, M/s. B.G. Shirke Construction Technology Pvt. Ltd., is a non-commercial construction and, therefore, it is not liable to Service Tax under the category of 'Commercial or Industrial Construction Service'. Accordingly, we allow the appeal.

Though it pertains to a case relating to Commercial or Industrial Construction service, the logic applies to this case. One of the grounds in the review order is that amounts would be charged for utilization of the said Town Hall. The above judgement clearly states that just because some amount is charged, it cannot be said that it is a commercial or industrial construction,. Accordingly, the premise that just because some amount is charged for use of the Town Hall, it would mean that the activity is pertaining to commerce, industry, or any other business or profession would not stand the scrutiny of law.

14. Lastly, in the clarification by CBEC, (Taxation Guide – Guidance Note – 7 – Exemptions dated 20.06.2012), stated as follows:

7.9.2 What is the significance of words predominantly for use other than for commerce, industry, or any other business or profession?

The exemption is available for a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession. The significance of the word predominantly is that benefit of exemption will not be denied if the building is also incidentally used for some other purposes if it is used primarily for commerce, industry, or any other business or profession.

15. In view of the foregoing, the appeal filed by the department is rejected and the impugned OIO dated 8.8.2016, is upheld.

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

16. The appeal filed by the appellant stands disposed of in above terms.

(उमा शंकर)
केन्द्रीय कर आयुक्त (अपील्स)

Date : 30.08.2017

Attested

(Vinod Lukose)
Superintendent ,
Central Tax(Appeals),
Ahmedabad.

By RPAD.

To,

M/s. Bhavani Construction Company,
5, Patidarnagar, Vibhag 2,
Opposite Luv Kush Bungalows,
Dobhighat Road, Mehsana.

Copy to:-

1. The Chief Commissioner, Central Tax, Ahmedabad Zone .
2. The Commissioner, Central Tax, Gandhinagar Commissionerate.
3. The Deputy/Assistant Commissioner, Central Tax, Division Mehsana, Gandhinagar Commissionerate.
4. The Additional Commissioner, System, Central Tax, Gandhinagar Commissionerate.
5. Guard File.
6. P.A.