
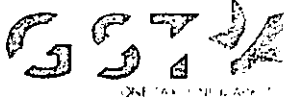


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद – उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर./ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- oaahmedabad2@gmail.com</p>

निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN 20210264WT0000555F6E

फा.सं./F.No. STC/15-04/OA/2020-Denovo

आदेश की तारीख/Date of Order :- 03.02.2021

जारी करने की तारीख/Date of Issue :- 03.02.2021

द्वारा पारित/Passed by:-

मारुत त्रिपाठी / Marut Tripathi

संयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 41/JC/ MT /2020-21

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

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इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप संख्या इ.ए.-1 (E.A.-1) में दाखिल कर सकता है। इस अपील पर रु .2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form EA-1 to the Commissioner (Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within sixty days from the date of its communication. The appeal should bear a court fee stamp of Rs. 2.00 only.

इस आदेश के विरुद्ध आयुक्त के शुल्क गये मांगे पहले से करने अपील में (अपील) 7.5% का भुगतान करना होगा, जहाँ शुल्क यानि की विवादग्रस्त शुल्क या विवादग्रस्त शुल्क एवं दंड या विवादग्रस्त दंड शामिल है।

An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute. (as per amendment in Section 35F of Central Excise Act, 1944 dated 06.08.2014)

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या इ.ए.-1 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील) नियमावली 2001 के नियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

(1) उक्त अपील की प्रति।

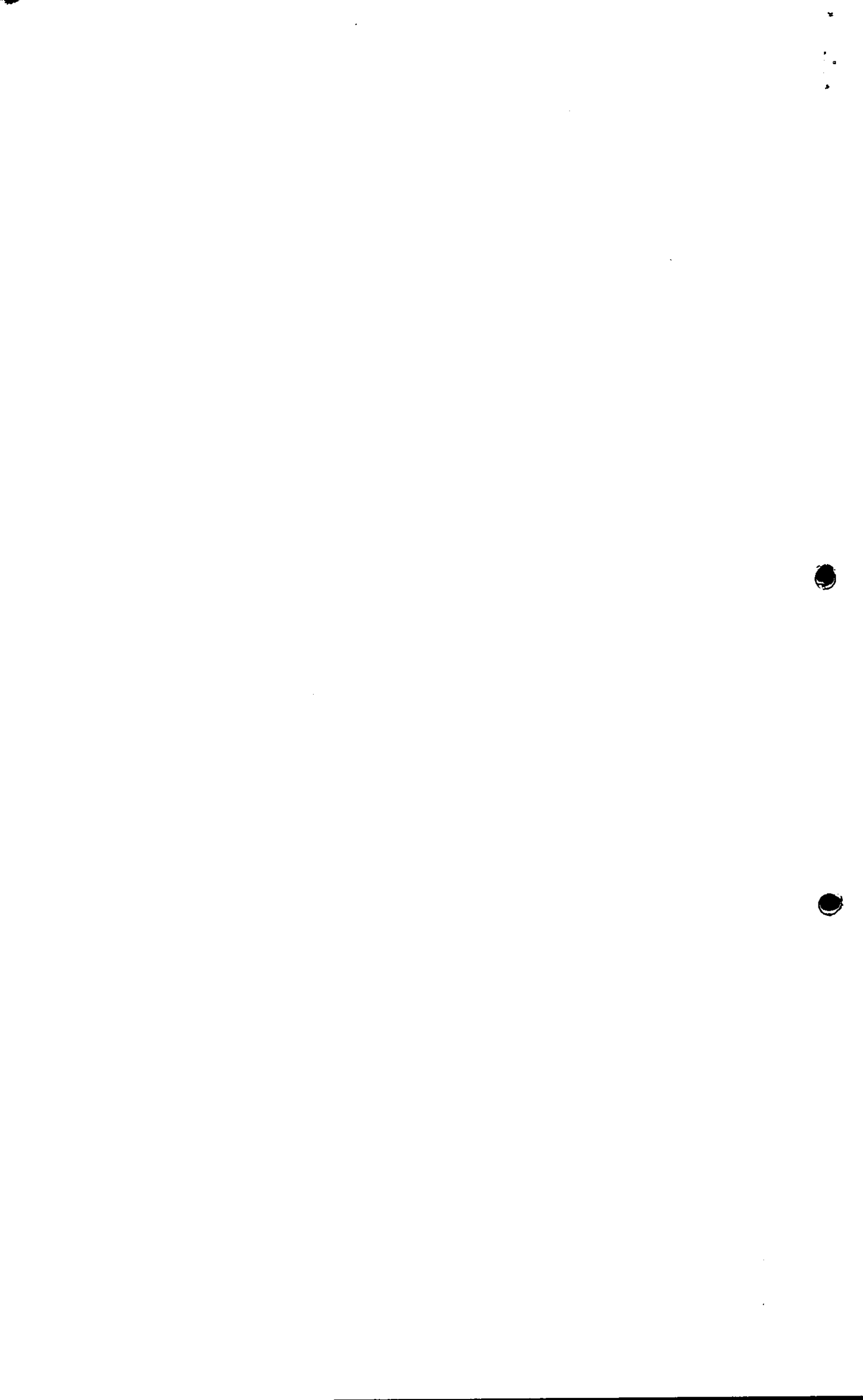
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु) 2.00 .दो रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form EA-1 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:

(1) Copy of accompanied Appeal.

(2) Copies of the decision or, one of which at least shall be certified copy, the order appealed against OR the other order which must bear a court fee stamp of Rs.2.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice No. STC/04-52/O&A/SCN/NJD/2006 dated 12.03.2007 issued to M/s N.J. Devani Builders Pvt. Ltd. behind Ishwar Bhuvan, Navrangpura, Ahmedabad.



Brief Facts of the Case

M/s N.J. Devani Builders Pvt. Ltd. behind Ishwar Bhuvan, Navrangpura, Ahmedabad (herein after referred to as "the said assessee") holding Service Registration No. AAACN4952DST001 was engaged in providing taxable service supplies namely Commercial & Industrial Construction Services as specified under clause 25(b) of Section 65 of the Finance Act, 1994. They were also availing the Cenvat Credit on input services in terms of Cenvat Credit Rules, 2004 and paying service tax on taxable value of taxable services realized by availing abatement in view of the Notification No. 15/2004-ST, dated 10.09.2004.

2. As per Sub Rule (1) of Rule 3 of Cenvat Credit Rules, 2004 that a provider of taxable services shall be allowed to take credit of service tax and the Education Cess paid on input services leviable under Section 66 of the Finance Act, 1994 read with section 93 of the Finance Act (No.2) Act, 2004. It also appeared that as per Notification No. 1/2006-Service tax, dated 01.03.2006, exemption from payment of service tax leviable on Commercial & Industrial Construction Services in excess of 33% of the gross amount (value) charged by such service provider was admissible subject to the conditions specified in the proviso to the said notification as under:

"Provided that this notification shall not apply in cases where-

- (i) the Cenvat Credit of duty paid on inputs or capital goods or the Cenvat Credit of Service Tax on input services, used for providing such taxable service, has been taken under the provisions of the Cenvat Credit Rules, 2004 or
- (ii) the services provider has availed the benefit under the Notification of the Government of India in the Ministry of Finance (department of Revenue), No. 12/2003-Service Tax dated 20.06.2003(G.S.R. 503(E), dated the 20th June, 2003)

3. It was observed that the said assessee had taken and utilized the Cenvat Credit of Service Tax amounting to Rs. 1,15,383/- and Education Cess amounting to Rs. 2,308/- (total Rs. 1,17,691/-) in the month of March-2006 which had been paid by them on Goods Transport Agency Services during the month of March-2006. As per the proviso to the Notification No. 1/2006-Service Tax dated 01.03.2006, abatement of 67% shall be available and admissible, if the said assessee does not take or avail Cenvat Credit of input services, used for providing taxable services. The payment of service tax and education cess made on Goods Transport Agency Services in respect of which Cenvat Credit had been taken was covered by the definition of "Input Services" given in Rule 2(1) of the Service Tax Rules, 2004. Therefore, exemption of service tax leviable on Commercial and Industrial Construction Services in excess of 33% of the gross amount (value) charged by such service provider was not admissible to the said assessee. In view of the above facts, abatement of 67% of the gross amount (value) charged by such service provider availed by the said assessee was required to be disallowed in view of the proviso to Notification No. 1/2006-Service Tax dated 01.03.2006. Thus the assessee had short paid the amount of Rs. 8,50,142/- (service tax) and Rs. 17,002/- (education Cess) total Rs. 8,67,144/- during the period from 01.10.2005 to 31.03.2006.

Looking to the above facts, it was observed that the said assessee had failed to prove that the abatement i.e. exemption as per Notification No. 1/2006-Service Tax dated 01.03.2006 was admissible to them and thus they had wrongly availed Cenvat Credit of Rs. 8,67,144/-. The said



centvat Credit was inadmissible and wrongly availed and hence the same was required to be demanded and recovered from them under rule 14 of Cenvat Credit rules, 2004 read with Section 73 and 75 of the Finance Act, 1994 as well as Section 11A and 11B of the Central Excise Act, 1944.

5. It also appeared that the said assessee was providing service namely " Goods Transport Services" (besides the main services namely: Commercial and Industrial Construction Services) as defined under section 65(50b) the Finance Act,1994 read with sub-clause(zzb) of clause (105) of Section 65 ibid and which was taxable with effect from 01.01.2005. It was further observed that the said service provider had not obtained service tax registration for the said taxable service under the Finance Act, 1994 and also not declared the taxable value of " Goods Transport Agency Services" provided by them during the period from 01.01.04 to 30.09.2005. Thus, they had contravened the provisions of section 67, 68, 69 and 70 of the Finance Act,1994 read with Rule: 4,6 and 7 of service tax rules,1994 with intent to evade payment of service tax. Hence they were liable to a penal action under section 76, 77 and 78 of the Finance Act,1994 read with rule 15 of Cenvat Credit Rules 2004.

6. Therefore, M/s N.J. Devani Builders Pvt. Ltd. behind Ishwar Bhuvan, Navrangpura, Ahmedabad were called upon to show cause to the Additional Commissioner of Service Tax, 1st floor, APM Shopping Mall, Opp Sachin Tower, Satellite Ahmedabad, vide Show cause Notice No.STC/04-52/O&A/SCN/NJD/2006 dated 12.03.2007, as to why:

(i) an exemption from payment of service tax and education cess leviable on "Commercial and Industrial Construction Services" in excess of 33% of the gross amount(value) charged amounting to Rs 8,67,144/- (Rupees Eight Lakhs Sixty Seven Thousand One Hundred Forty Four only) availed by the said assessee should not be denied under the provisions of Section 66 of the Finance Act,1994 read with the provisions of Government of India in the Ministry of Finance (department of Revenue), No. 12/2003-Service Tax dated 20.06.2003(G.S.R. 503(E), dated the 20th June,2003) and should not be demanded and recovered from them under Section 73 of the Finance Act,1994.

(ii) a penalty should not be imposed upon them under section 76 of the Finance Act,1994 for short payment of service tax and education cess of Rs. 8,67,144/- .

(iii) interest at the appropriate rate should not be charged upon them under Section 75 of the Finance Act,1994 for delayed payment of tax liabilities under the Finance Act,1994.

(iv) Penalty under section 75-A of the Finance Act,1944 should not be imposed on the said assessee in as much as they have failed to obtain service tax registration for the "Goods Transport Agency Services" under the Finance Act,1994.

(v) Penalty under section 76 of the Finance Act,1994 should not be imposed on them in as much as the said assessee has failed to pay service tax within the stipulated time frame as mentioned herein above.

Penalty under section 77 of the Finance Act,1994 should not be imposed on the said assessee in as much as they have failed to file the prescribed ST 3 returns in respect of Goods Transport Agency Services within the stipulated time in terms of the Provisions of Rule:7 of the Service Tax Rules,1994



(vii) Penalty under section 78 of the Finance Act, 1994 should not be imposed on the said assessee for suppressing and not disclosing the value of said taxable service namely "Goods Transport Agency Services" provided by them before the Central Excise Department with intent to evade payment of service tax as mentioned above.

7. The aforesaid Show Cause Notice was adjudicated by the Joint Commissioner, Service Tax, Ahmedabad, vide Order-in-original No. STC/66/Joint. Commr/2007-08 dated 16.01.2008, wherein, the adjudicating authority has confirmed the demand raised in the said show cause notice, charged interest imposed penalty in terms of the Finance Act, 1994 and rules made thereunder. Aggrieved with the above order-in-original, the said assessee preferred an appeal before Commissioner Appeals, Ahmedabad. The Commissioner (A) vide their OIA No. 49/2009(STC)/LMR/ Commr.(A)/Ahd dated 26.02.2019 partially allowed the appeal. However, the said assessee being aggrieved with the OIA passed by the Commissioner(A), filed an appeal before CESTAT, Ahmedabad. The Hon'ble CESTAT, Ahmedabad vide order No. A/10793/2019 dated 03.06.2019 remanded the case to original adjudicating authority for fresh consideration.

8. In the meantime, GST Regime came in to existence w.e.f 01.07.2017 and Service Tax Commissionerate was merged with jurisdictional Central Excise Commissionerates. The CBEC vide Notification No.12/2017-CE(NT) dated 9.6.2017, appointed officers of Central Excise Department as Central Excise Officers and vested them with the power under the Central Excise Act, 1944 (1 of 1944) and the Rules made there under, with respect to the jurisdiction specified in the notification issued under rule 3 of the Central Excise Rules 2002. The said notification was made effective from 22.6.2017 vide Notification No.16/2017-CE (NT) dated 19.06.2017.

9. With the Amendment of Act 32 of Finance Act, 1944, Chapter V (Service Tax) of the Finance Act, 1994 has been omitted hence all the service tax cases have been transferred to this Commissionerates for adjudication.

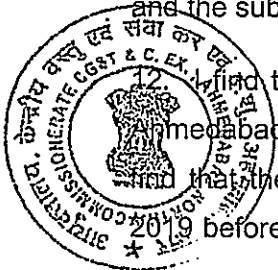
Personal Hearing:

10. Personal hearing in the matter was fixed on 29.01.2021. In response to the personal hearing notice, the said assessee has submitted that being aggrieved with CESTAT order No. A/10793/2019 dated 03.06.2019 they had filed appeal SCA No. 11513 of 2019 before Hon'ble High Court of Gujarat and the matter has already been decided in their favour by Hon'ble High Court of Gujarat. Therefore, the said assessee requested this office to cancel the personal hearing fixed, as matter has already been decided.

Discussion and Findings:

11. I have carefully gone through the records of the case, documents available on record and the submission of the assessee.

I find that the case was remanded to the adjudicating authority by the Hon'ble CESTAT, Ahmedabad, vide order No. A/10793/2019 dated 03.06.2019 for deciding the matter afresh. I find that the said assessee being aggrieved with the CESTAT order filed SCA No. 11513 of 2019 before Hon'ble High Court of Gujarat. The Hon'ble High Court of Gujarat vide order dated



12.03.2020 decided the said case in favour of the assessee. In para 9 of the order passed by the Hon'ble High Court of Gujarat vide order dated 12.03.2020 it was held that-

"9. For the Foregoing reasons, the petition succeeds and is hereby allowed. The impugned order dated 03.06.2019 passed by the Tribunal in Service Tax Appeal No. 107 of 2019 is here by quashed and set aside and consequently Show Cause Notice F. No. STC/04-52/O&A/SCN/NJD/2006 dated 12.03.2007 is also quashed and set aside. In view of the statement made by the learned advocate for the petitioner that, the petitioner would not be entitled to any refund of service tax already paid by it, pursuant to any order passed prior to the passing of the impugned order by the tribunal."

13. I find that the case has been decided in favour of the said assessee by the Hon'ble High Court of Gujarat and set aside the Show Cause Notice F. No. STC/04-52/O&A/SCN/NJD/2006 dated 12.03.2007. Further, the Assistant Commissioner (legal), CGST & C.Ex., Ahmedabad North vide letter dated 18.12.2020 informed that the Hon'ble High Court's order dated 12.03.2020 in SCA 11513/2019 has been accepted by Principal Commissioner, CGST & C.Ex., Ahmedabad North on 16.09.2020. Therefore, by following judicial discipline, I am bound to follow the order of Hon'ble High Court of Gujarat. Accordingly I find that there is no point in demanding service tax on the issue already decided by the Hon'ble High Court of Gujarat and hold that the demand in the present case is not sustainable.

14. I find that no further discussion is needed on this issue in view of the fact, that the matter has already been decided by the Hon'ble High Court of Gujarat. In view of the my findings above, I pass the following orders:-

ORDER

15. I drop the proceedings initiated in the Show cause Notice F. No. STC/04-52/O&A/SCN/NJD/2006 dated 12.03.2007 issued against M/s N.J. Devani Builders Pvt. Ltd, Ahmedabad.

16. The Show Cause Notice F. No. STC/04-52/O&A/SCN/NJD/2006 dated 12.03.2007 is disposed-off in the above manner.



Joint Commissioner
मरुत त्रिपाठी / MARUT TRIPATHI
संयुक्त आयोग
CGST & C.Ex.,
Ahmedabad North

F.No. STC/15-04/OA/2020-Denovo

Date: 03.02.2021

To,

M/s N. J. Devani Builders Pvt Ltd.
Behind Ishwar Bhuvan,
Navrangpura, Ahmedabad

Copy To:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The Dy. /Assistant Commissioner, Division-VII, CGST & CX, Ahmedabad North.
3. The Superintendent, Range-I, Division-VII, CGST & CX, Ahmedabad North
4. Guard File.