



आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क:
O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE,

द्वितीय तल, जी एस टी भवन / 2nd Floor, GST Bhavan.

रेस कोर्स रिंग रोड, / Race Course Ring Road,

राजकोट / Rajkot - 360 001

Tele Fax No. 0281 - 2477952/2441142 Email: cexappealstajkot@gmail.com



सत्यमेव जयते

रजिस्टर्ड डाक ए. डी. द्वारा :-

क्र	अपील / फाइल संख्या/ Appeal / File No.	मूल आदेश सं / O.I.O. No.	दिनांक / Date
	V2/33,34,35/BVR/2017	R/73,72,71/2016	03.01.2017
	V2/36/BVR/2017	R/70/2016	31.12.2016
	V2/54,56/BVR/2017	R/82,81/2016	12.01.2017
	V2/55,57/BVR/2017	R/84,85/2016	13.01.2017

ख अपील आदेश संख्या (Order-In-Appeal No.):

BHV-EXCUS-000-APP-051-TO-58-2017-18

आदेश का दिनांक /
Date of Order: **16.10.2017** जारी करने की तारीख /
Date of issue: **23.10.2017**

**कुमार संतोष, आयुक्त (अपील्स), राजकोट द्वारा पारित /
Passed by Shri Kumar Santosh, Commissioner (Appeals), Rajkot**

ग अपर आयुक्त/ संयुक्त आयुक्त/ उपायुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम। द्वारा उपरलिखित जारी मूल आदेश से सृजित: /
Arising out of above mentioned OIO issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham :

घ **अपीलकर्ता & प्रतिवादी का नाम एवं पता /Name&Address of the Appellant & Respondent :-**
Sardar Sarovar Narmada Nigam Ltd., Ex. Engg. SBC Dn. No. 5/1,, Taluka Seva Sadan, Halvad Road, Dhrangadhra

इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है।/
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way:

- (A) सीमा शुल्क केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है। /
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to:-
- (i) वर्गीकरण मूल्यांकन से सम्बन्धित सभी मामले सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण की विशेष पीठ, वेस्ट ब्लॉक नं 2, आर.के. पुरम, नई दिल्ली, को की जानी चाहिए। /
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.
- (ii) उपरोक्त परिच्छेद 1(a) में बताए गए अपीलों के अलावा शेष सभी अपीलों सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहुमाली भवन असावा अहमदाबाद- 380016 को की जानी चाहिए। /
To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2nd Floor, Bhaumali Bhawan, Asarwa Ahmedabad-380016 in case of appeals other than as mentioned in para- 1(a) above
- (iii) अपीलीय न्यायाधिकरण के समक्ष अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमवाली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये प्रपत्र EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /
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.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/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 Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-.
- (B) अपीलीय न्यायाधिकरण के समक्ष अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमवाली, 1994, के नियम 9(1) के तहत निर्धारित प्रपत्र S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्टार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा। /
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 accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee 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. Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

(i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित प्रपत्र S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा पारित आदेश की प्रतियाँ संलग्न करें (उनमें से एक प्रति प्रमाणित होना चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी। / The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

(ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टेट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1944 की धारा 35एफ के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो। केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत "मांग किए गए शुल्क" में निम्न शामिल है

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

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरंभ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।/

For an appeal to be filed before the CESTAT, 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, 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, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 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.

(C) **भारत सरकार को पुनरीक्षण आवेदन :**
Revision application to Government of India:

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केन्द्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त भवन, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। / A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA, 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। / In case of any loss of goods, where the loss occurs 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

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केन्द्रीय उत्पाद शुल्क के छुट (रिबेट) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। / In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। / In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो आयुक्त (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा समायादिधि पर या बाद में पारित किए गए हैं। / 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 such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां प्रपत्र संख्या EA-8 में, जो की केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संघर्षण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केन्द्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी 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.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न रकम एक लाख रुपये से ज्यादा हो तो रुपये 1000 -/ का भुगतान किया जाए। / The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved in Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेशों का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपर्युक्त ढंग से किया जाना चाहिये। इस तथ्य के होते हुए भी की लिखा पढ़ी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various numbers 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 lakh fee of Rs. 100/- for each.

(E) यथासंशोधित न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति पर निर्धारित 6.50 रुपये 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 adjudicating authority shall bear a court fee stamp of Rs. 6.50 as prescribed under Schedule-I in terms of the Court Fee Act,1975, as amended.

(F) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबन्धित मामलों को सम्मिलित करत वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है। / 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.

(G) उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbec.gov.in को देख सकते हैं। / For the elaborate, detailed and latest provisions relating to filing of appeal to the higher appellate authority, the appellant may refer to the Departmental website www.cbec.gov.in



:: ORDER – IN – APPEAL ::

M/s. Sardar Sarovar Narmada Nigam Ltd., Ex. Engg. SBC Division No. 5/2, Taluka Seva Sadan, Halvad Road, Dhrangadhra, Gujarat (hereinafter referred to as "the appellant") filed eight appeals, as detailed in Table below, against respective Order-in-Original (hereinafter referred to as "the impugned orders") passed by the Assistant Commissioner, Service Tax Division, Bhavnagar (hereinafter referred to as "the lower adjudicating authority"). Since, the issue involved is common in nature, I proceed to decide all eight appeals through common order.

Sr. No.	Appeal No.	OIO No. & Dt.	Amt. of refund rejected (in Rs.)
1	33/2017	R/73/2016 – 03.01.2017	44,75,841/-
2	34/2017	R/72/2016 – 05.01.2017	7,87,770/-
3	35/2017	R/71/2016 – 03.01.2017	2,60,578/-
4	36/2017	R/70/2016 – 31.12.2016	4,55,344/-
5	54/2017	R/82/2016 – 12.01.2017	1,86,182/-
6	55/2017	R/84/2016 – 13.01.2017	23,20,221/-
7	56/2017	R/81/2016 – 12.01.2017	2,15,800/-
8	57/2017	R/85/2016 – 13.01.2017	18,29,566/-

2. The brief facts of all the cases are that the appellant, being wholly owned Government of Gujarat undertaking, had filed refund claims under the Section 101 of the Finance Act, 2016 on the ground that no service tax is required to be levied or collected during the period commencing from 01.07.2012 to 29.01.2014 in respect of taxable services provided to a government authority or a board or any other body set up by the Central Government or State Government. All eight Refund claims were rejected by the lower adjudicating authority vide the impugned orders on various grounds, *inter alia*, (i) the appellant has not submitted the signature verification proof of authorized signatory with name and designation; (ii) some documents submitted by the appellant in support of refund claim were not self certified; (iii) the appellant not submitted the challans (iv) the appellant not submitted their banking details, (v) the appellant not submitted certificate by authorized Chartered Accountant showing correlation between work orders and challans submitted; (vi) The appellant not submitted invoices on the basis of which payments have been made to sub-contractors; (vii) the appellant not submitted reconciliation sheet of service tax paid; and (viii) the appellant not submitted self certified copies of work orders etc. However, the lower adjudicating authority heavily relied upon the provisions of Section 109 of the Finance Act, 2013 while rejecting all eight refund claims on the ground that the Service Tax now being claimed to be refunded had been paid under Voluntary Compliance Encouragement Scheme, 2013 (hereinafter referred to as "VCES, 2013"), and Section



109 of Finance Act, 2013, had very clearly stipulated that Service Tax paid under VCES, 2013 shall not be refunded under any circumstances.

3. Being aggrieved with the impugned orders, the appellant preferred appeals, *inter-alia*, on the grounds that : -

3.1 The lower adjudicating authority erred by considering of Section 109 of the Finance Act, 2013 and stating that Service Tax was paid under VCES, 2013 and holding that appellant are not eligible to get refund of Service Tax paid; that as per Section 107 of the Finance Act, 2013, the assessee had to make a declaration of "tax dues"; that as per Section 95(1)(e) of the Act, 'tax dues' means the service tax due or payable under the Chapter or any other amount due or payable under section 73A thereof, for the period beginning from the 1st day of October, 2007 and ending on 31st day of December, 2012, including a cess leviable thereon under any other Act for the time being in force, but not paid as on the 1st day of March, 2013; that Section 109 of the VCES, 2013 says that any amount paid in pursuance of the declared tax dues shall not be refundable; hence it is clear that "tax dues" cannot be refunded, but any other amount may be refunded since no bar on such refund has been placed under Section 109; that by way of retrospective amendment in Section 101 of the Finance Act, 1994, the Service Tax paid by the appellant ceases to be 'tax dues'; that VCES, 2013 places no restriction on refund of amount which is not tax dues; that they relied upon a case of Swastik Sanitaryware Ltd. Vs. UOI reported as 2017 (49) S.T.R. 484 (Guj.) (para 15) and Nobles Construction Gujarat Pvt. Ltd. no citation provided by the appellant, but was a case whether refund was time barred or not.

3.2 The lower adjudicating authority failed to appreciate the facts that Section 109 of VCES, 2013 is applicable only to tax which was due and deposited under VCES, 2013

3.3 That by virtue of retrospective amendment, it emerged that they were not liable to pay service tax under reverse mechanism for services provided to them as they were an authority set up by Government of Gujarat. Hence, the amount paid in name of Service Tax under VCES, 2013 assumes the character of deposit and it was not tax dues and Section 109 has not placed any bar on refund of such deposits and therefore restrictions of Section 109 do not apply to their cases.

3.4 The lower adjudicating authority failed to appreciate that the appellant had paid tax in terms of Section 66B of the Act and also failed to appreciate that Section 101 of



the Act overrides VCES provisions; that Section 101 was introduced on 14.05.2016, but given retrospective exemption to the specified services provided to Government authorities, local government or Board/authority set up by the Government of India/ Government of Gujarat. The said section begins with *non obstante* clause, "Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of July, 2012 and ending with the 29th day of January, 2014 (both days inclusive) in respect of taxable services provided to an authority or a board or any other body...."; therefore, Section 101 of the Act overrides Section 66B; that they made declaration under VCES of the tax dues; that only those can be considered as tax dues, which were payable in terms of Section 66B, which is the charging section for the purposes of service tax; that the dues declared and paid by the appellant under VCES were the tax dues covered under Section 66B; that Section 101 overrides Section 66B and states that the service tax paid on specified services pertaining to the period July 01, 2012 to January 29, 2014 was to be refunded.

3.5 The lower adjudicating authority failed to appreciate that Section 101 of the Act does not place any restriction on refund of amounts paid under VCES, 2013; that it provides for a refund of any Service Tax paid for the specified services for the specified period, so long as the refund claim is filed within six months of May 14, 2016 and there is no unjust enrichment; that they have satisfied all the conditions necessary for claiming the refund; that lower adjudicating authority has not made out case for unjust enrichment; that there is no restriction on refund of tax paid whether in due course or under any special scheme like the VCES, 2013; that Section 101 was introduced to provide a substantive benefit to the taxpayer; that the legislation, in its wisdom has not imposed any conditions for refund of service tax on specified services provided to Government authority, local government or Body or authority set up by Government of India or State government; that the appellant is a body set up by Government of India or State Government; that the appellant is a body set up by Government of Gujarat; that the intention of Government is to grant refund - a substantive benefit as is clear from the CBEC Circular D.O.F. No.334/8/2016-TRU, dated February 29, 2016. where it is clarified that : -

"Service Tax exemption to canal, dam or other irrigation works with retrospective effect:

Definition of Governmental authority was amended with effect from 30.01.2014 so as to exempt services provided by way of



construction, erection, maintenance, or alteration etc. of canal, dam or other irrigation works provided to entities set up by Government but not necessarily by an Act of Parliament or a State Legislature. However, services provided prior to 30.01.2014 to such bodies remained taxable. The benefit of exemption is proposed to be extended to the said services provided during the period from the 1st July, 2012 to 29.01.2014.

(b) Refund of Service Tax paid on the said services during the period from the 1st July, 2012 to 29.01.2014 shall also be allowed in accordance with the law including the law of unjust enrichment. Application for refund may be allowed to be filed within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President.

[New section 101 is being inserted in the Finance Act, 1994] (Clauses 156 of the Finance Bill, 2016 refers)"

[Emphasis supplied]

3.6 There is no intention on part of legislature to restrict the refund of service tax paid on specified services; that Section 101 itself does not place any restrictive conditions.

4. Personal hearing in the matter was attended by S/Shri Yash Shah, and Vedant Raval, both C.A. wherein they reiterated the grounds made in the appeals. Personal hearing notice was also sent to the jurisdictional Assistant Commissioner however none appeared from the Department.

Findings:-

5. I have carefully gone through the impugned orders, appeal memorandums and written, as well as oral submissions made by the appellant. The issue to be decided in all eight appeals is whether the appellant is eligible for refund of Service Tax paid under VCES, 2013, or not.

6. I find that the appellant has claimed refund of that Service Tax also, which they paid availing benefit of VCES, 2013, but the lower adjudicating authority has rejected these amounts sanctioning other amount of refund claims. Service Tax of these amounts were paid by the appellant on or before 31.12.2013 and remaining 50 per cent of Service Tax by 30.06.2014, as per provisions of VCES, 2013. The facts of the cases establish that Service Tax sought to be refunded under these eight appeals, was originally paid by the appellant under VCES, 2013 only and under nothing else.



6.1 I would like to reproduce Section 109 of the Finance Act, 2013 (governing VCES, 2013), which reads as under :-

"No refund of amount paid under the Scheme.

109. Any amount paid in pursuance of a declaration made under sub-section (1) of section 107 shall not be refundable under any circumstances."

[Emphasis supplied]

6.2 It is an admitted and undisputed fact that all payments for which eight appeals have been filed had actually been paid under VCES, 2013. Section 109 very categorically states that any amount paid in pursuance of a declaration made under VCES, 2013 would not be refundable. I find that embargo placed upon seeking refund of amount paid under VCES, 2013 is plenary and very categorical and hence no refund is available to the appellant.

6.3 I also find that Section 108 of Finance Act, 2013 reads as under :-

"(1) Notwithstanding anything contained in any provision of the Chapter, the declarant, upon payment of the tax dues declared by him under sub-section (1) of section 107 and the interest payable under the proviso to sub-section (4) thereof, shall get immunity from penalty, interest or any other proceeding under the Chapter. (2) Subject to the provisions of section 111, a declaration made under sub-section (1) of section 107 shall become conclusive upon issuance of acknowledgement of discharge under sub-section (7) of section 107 and no matter shall be reopened thereafter in any proceedings under the Chapter before any authority or court relating to the period covered by such declaration."

[Emphasis supplied]

6.4 I find that the words used in the aforesaid sections, like (i) *"a declaration made under sub-section (1) of section 107 shall become conclusive upon issuance of acknowledgement of discharge under sub-section (7) of section 107 and no matter shall be reopened thereafter in any proceedings under the Chapter before any authority or court relating to the period covered by such declaration"*, and (ii) *"under any circumstances"* in Section 109 are quite clear and express provisions, which rule out, whatsoever, any ambiguity regarding non - refundability of amount paid under VCES, 2013. Accordingly, the amount paid by the appellant is not refundable under any circumstances. I am of the considered view that the impugned orders are correct, legal and proper and all eight appeals under consideration are liable to be rejected.

6.5 I also find that these eight appeals have been filed claiming that Section 101 of Finance Act, 2016 exempted specified services provided to government authority, local government, Board or authority set up by the Central Government or State Government and the appellant quoted CBEC Circular 334/8/2016-TRU dated 29.02.2016 as detailed at Para 3.5 to claim these amounts under refund. However, careful study reveals that in



Para (b) of this very Circular, it is very clearly mentioned that Refund of Service Tax paid should be allowed in accordance with law including the law of unjust enrichment.

6.6 In view of above, I am of the considered view that the refund under Section 101 of the Finance Act, 2016 is not absolute, but subject to provisions of law for refund, including bar of unjust enrichment. Therefore, I am of considered view that Service Tax paid under VCES, 2013 is not allowed to anyone under any circumstances, and hence refund of Service Tax paid by the appellant under VCES, 2013 cannot be allowed under Section 101 of the Finance Act, 2016.

6.7 I would also like to examine whether appeal can be filed for refund of payment of Service Tax made under VCES, 2013. Hon'ble CESTAT, Mumbai has in two appeals namely, Dr. Yashwant Dhume reported as 2017-TIOL-3609- CESTAT-MUM and M/s. Nizam Ladji reported as 2017-TIOL-3610-CESTAT-MUM decided that no appeal can be filed in respect of Service Tax payments made under VCES, 2013.

7. In view of above facts and legal position, I uphold the impugned order and reject all eight appeals filed by the appellant.

७.१. अपीलकर्ता द्वारा दर्ज की गई अपीलस का निपटारा उपरोक्त तरीके से किया जाता है।

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

सत्यापित,
निखिल ए. रूपारेलिया
अधीक्षक (अपील्स)

(कुमार संतोष)
आयुक्त (अपील्स)

By R.P.A.D.

To

M/s. Sardar Sarovar Narmada Nigam Ltd., Ex. Engg. SBC Division No. 5/2, Taluka Seva Sadan, Halvad Road, Dhrangadhra, Gujarat	मेसर्स सरदार सरोवर नर्मदा निगम लिमिटेड, एक्स इंजीनियर, SBC डिविजन, तालुका सेवा सदन, हलवाद रोड, ध्रंगधारा, गुजरात।
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Copy to:

- 1) The Chief Commissioner, GST & Central Excise, Ahmedabad Zone, Ahmedabad.
- 2) The Commissioner, GST & Central Excise Commissionerate, Bhavnagar.
- 3) The Assistant Commissioner, GST & Central Excise, Bhavnagar.
- 4) The Range Superintendent, GST & Central Excise, Bhavnagar
- 5) Guard File.

